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ABSTRACT

The responses of over 700 members of the American Association of School Administrators to a survey investigating the status of collective bargaining in today's elementary and secondary school systems served as the basis for this report. Questions were asked concerning all aspects of collective bargaining (from the administrative perspective), including preparation for bargaining, contract language and management rights, negotiation strategies, impasse resolution, contract administration, grievances and arbitration, public relations, salaries, fringe benefits, reduction in force, bargaining with administrators, and preventing unionization in unorganized districts. In addition to discussing the statistical significance of the data gathered through the survey, the report cites numerous examples of actual practices reported by survey respondents. These examples include descriptions of activities, established policies and procedures, and sample documents. The information is synthesized to provide general recommendations for conducting bargaining and creating bargaining policy. Specific tips are highlighted. A list of organizations offering assistance in negotiations is appended. (PGD)

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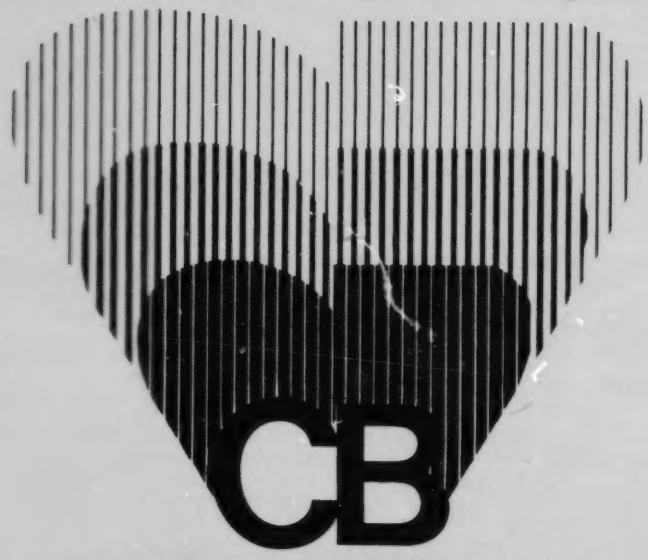
AASA Critical Issues Report



COLLECTIVE BARGAINING

PROBLEMS AND SOLUTIONS

American Association of School Administrators

$10.95

by Peggy Odell Gonder
Produced by
Education News Service
Sacramento, Calif.
for the
American Association of School Administrators

EA 013 730

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Our thanks to all those who helped — administrators and other school personnel, school negotiators, school board members and experts in various fields. Special thanks go to Frank Forbes, coordinator of the National School Labor Relations Service; Fred Lifton, AASA legal counsel, a school negotiator and a member of the Chicago law firm of Robbins, Schwartz, Nicholas, Lifton and Taylor, Ltd.; and James Moran, a school negotiator and executive director of the New Jersey Association of School Administrators.

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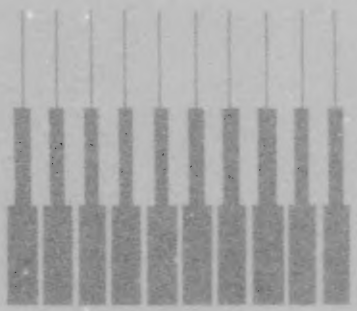
Chapter I



Overview

Collective bargaining for teachers is here to stay, and school district administrators realize they have to make the best of it. Many school administrators can cite positive results for their districts. Negative comments, however, are far more common. These conclusions are drawn from the responses to a survey for this **Critical Issues Report** by more than 700 members of the American Association of School Administrators.

The survey asked administrators to list the major positive or negative effects of bargaining on their districts. The harmful effect mentioned most often by survey respondents was the barrier bargaining created between teachers and administrative staff.

Other negative effects mentioned by respondents included: "a work-to-rule, anti-administration attitude by the teachers association," "a tendency to do no more than negotiated," "gives poorly performing teachers something to hide behind," "diminishes professional attitude" and "lowered morale."

On the plus side, districts said collective bargaining had led to "clear and specific benefits and personnel procedures," "direct communication and understanding between teachers and the board," "uniformity of procedure" and "mutual respect."

"Principals are more conscious of being fair and impartial when making decisions in their school," wrote an administrator from the 3,400-pupil Jefferson Parish Schools in Gretna, La. "At first bargaining was negative," said Supt. Keith Hall of Bristol, Vt. "Now, everyone is happy because the document spells out the roles."

Of the administrators responding to the survey, 81 percent said their district negotiates with one or more employee groups.

By far the most common bargaining relationship was between districts and teachers: 79 percent of survey respondents negotiate with teachers. Nearly one-third (32 percent) negotiate with classified employees or secretaries associations; 19 percent negotiate with principals; 16 percent with custodians; 10 percent, food service employees; and 9 percent, teacher aides. Some administrators also reported negotiating with bus drivers, building trades employees and nurses.

As reflected by the survey results, the word that most aptly describes the status of collective bargaining in education is diversity. Relatively small districts in highly unionized states may bargain with four or five employee organizations, while large school districts in right-to-work states still "meet and confer" with employees and unilaterally set salaries.

One reason for the diversity is that bargaining rights for school employees are governed by state, rather than federal laws.

Thirty-one states provide teachers with bargaining rights, and 25 states grant bargaining rights to classified school employees, according to *Cuebook: State Education Collective Bargaining Laws,* published by the Education Commission of the States, Denver. Most other states permit school boards to voluntarily bargain with employees.

State laws differ considerably regarding the scope of bargaining. Some limit bargaining to "wages, hours and working conditions," leaving the definition of working conditions to Public Employee Relations Boards or the courts. Other states, foreseeing a problem, include detailed lists of what may be bargained. Many states also describe what may not be bargained, in the context of management rights provisions.

In addition to variations in state laws, districts differ greatly in their approach to negotiations. In response to the survey for this report, many small and medium-size districts described their bargaining in terms that suggest an informal relationship based on trust.

"We emphasize trust, openness and flexibility as much as possible," noted Supt. Donald Strong of the 5,200-pupil Arlington Heights (Ill.) Public Schools. "This minimizes antagonism and rigidity at the table."

At the opposite extreme was this sentiment expressed by a New Jersey superintendent: "The bromides about the Little Red Schoolhouse are what kill us. There is no loyalty toward the institution on the part of unions. That's Alice in Wonderland."

Future Prospects

What labor relations issues will dominate collective bargaining in the 1980s? To find out, the survey asked administrators to list the three most important employee or labor relations issues facing their districts in the next 10 years. More than 50 responses were given, so similar responses were grouped together.

Here are the top vote getters, along with the percent of respondents who listed them:

Ranking	% of Responses	Issue
1	52%	Salaries
2	36%	Reduction in force, declining enrollment, job security
3	22%	Fringe benefits
4	21%	Management rights, control of schools
5	17%	Lack of funds
6	12%	Other (e.g., state and federal mandates, accountability)
7	9%	Working conditions, workload, calendar, length of schoolday
8	8%	Class size
9	7%	Issue of collective bargaining itself
10	5%	Quality of teachers, productivity, morale, working relationships
11	5%	Binding arbitration

Some educators are concerned about the gains teachers win through state legislation. One Ohio administrator said in an interview for this report that teachers in his state had more benefits and protections from state education statutes than most teachers receive through a collective bargaining law. Among other things, he noted, Ohio law guarantees teachers three days of personal leave and paternity leave.

What is the forecast for more state collective bargaining laws? It depends on whom you ask. In recent years, bargaining laws have failed by only a few votes in Kentucky, Missouri and Arizona. Doris Ross, researcher for the Education Commission of the States, noted, however, that the 1980 Republican landslide may have ushered in enough conservative state legislators to resist the tide toward state collective bargaining.

"Nobody here is predicting doom and gloom," countered Phil King of the communications office of the National Education Association (NEA). "The fact that public employees are organizing is not going to be stopped by a single election."

A Shift in the Balance

When school districts first began collective bargaining, they were met by highly sophisticated union negotiators who often won major concessions from management.

Responses to the survey for this report and dozens of interviews with school administrators and negotiators indicate that management is catching up.

The balance of this report contains different points of view and suggestions from negotiations experts, administrators and others on how school management can hold its own at the bargaining table and administer bargained contracts fairly and efficiently.

In reading this report, administrators and board members should keep in mind the words of one negotiator who commented on the advice offered by him and his colleagues: "Our advice reflects our experiences, and our experiences are all a little different." Other professional negotiators candidly admit, "There is no one 'best way' to bargain a contract. It depends on local circumstances."

As many alternatives as possible are described in areas in which administrators expressed the most concern. The aim is to help school districts find guidance applicable to their own local situation.

Chapter II

Preparing for Bargaining

Collective bargaining is the norm, rather than the exception in American public schools. In 1978, the most recent year for which figures are available, approximately 91 percent of all teachers in grades K-12 were members of either the National Education Association or the American Federation of Teachers. (Note: Not all NEA members bargain collectively. Most teachers in Texas, for example, are members of the Texas State Teachers Association, an NEA affiliate, but no Texas teachers work under collective bargaining agreements.)

The number of districts that do bargain is substantial. AASA surveyed 4,002 of its members for this **Critical Issues Report.** Out of 711 replies, 81 percent said they negotiate with one or more employee groups. Districts are far more likely to negotiate with teachers than with any other employees: 78 percent of the respondents said they negotiate with teachers, while only 32 percent negotiate with classified employees or secretaries, and 19 percent negotiate with principals.

Most non-bargaining districts are in states in the South and the Southwest that have no collective bargaining law. Some "meet and confer" with employee groups. Others have evolved formal or informal procedures for receiving employee suggestions. In fact, administrators and consultants interviewed for this report repeatedly stressed that the best way to avoid collective bargaining is to provide employees with opportunities to influence decisions affecting them and their work.

Selecting a Negotiator

One of the first decisions for a school district engaging in collective bargaining is who will conduct negotiations.

Opinions vary widely on this issue. In small districts, the superintendent or a board member often conducts negotiations, although experts advise against this practice. In large districts, especially where collective bargaining has been practiced for some time, an administrator usually serves as chief negotiator. This staff person may be a full-time director of employee relations, assistant superintendent, director of personnel or another person. Still other districts hire an "outside gun" — an attorney or labor relations specialist who negotiates for many districts.

Responses to the **Critical Issues Survey** for this report indicate that the bulk of school districts prefer to use an "insider" as chief negotiator. Nearly half (49 percent) use an inside staff person or board member, while only 28 percent use an outsider. (The 19 percent who do not bargain did not answer the question.)

In 17 percent of the districts using insiders, that person was an administrative staff member; 16 percent used the superintendent; and 13 percent, a school board member. About 2 percent of the respondents using insiders did not indicate the person's title, and a surprising 1 percent said a teacher negotiated for management.

Districts that bargain with more than one union sometimes divide the negotiating duties between two staff members. The director of personnel, for example, might negotiate with teachers, while the business manager negotiates with classified personnel. The advantage of this approach is that no one staff member is overburdened with the time consuming task of negotiating. The obvious disadvantage is that neither staff member gets as much practice perfecting the delicate art of negotiating. Also, coordination of strategy is more difficult. One negotiator might grant a benefit to classified employees that the other might deny to teachers.

Superintendents and Board Members

Most experts advise against having the superintendent at the table, much less having the top administrator serve as chief negotiator. Collective bargaining is an adversary process, and hard feelings may carry over after the contract is signed. Those hard feelings are usually directed at the chief negotiator, and this could hamper the superintendent's effectiveness with employees. Also, negotiations and preparation are extremely time-consuming. Most superintendents have received no training in negotiations, and some may not have the proper personality for the job.

Some experts oppose giving board members the responsibility for negotiating for some of the same reasons. Unless negotiating is part of their regular jobs, board members seldom have training in table tactics, writing contract language and the other skills needed in bargaining. They may not have the temperament to be a negotiator. Because they are not involved in the day-to-day operation of the schools, they may not see the pitfalls in union demands.

Having a board member as chief negotiator also eliminates the option of a "fall-back position," in which the negotiator says he or she must check with the superintendent and the board before agreeing to a provision. The fallback strategy gives the team time to check costs and other ramifications.

In spite of these objections, many districts do use superintendents and board members, with apparent success. A very small district may have no one to choose except the superintendent, board members and a principal or two.

Others contend that morale is better and the process is less adversarial when both sides get rid of "outsiders" brought in to conduct negotiations.

Caution: The hazard of "getting rid of the outsiders" is that local teachers who take over the negotiations reins may be well trained (thanks to the union), while the local administrator or school board member may have had little training in collective bargaining. The employee association can take advantage of the situation by getting management to agree to provisions that sound innocuous, but may decrease or destroy management's flexibility.

One example is a maintenance of benefits (or standards) clause. To the untrained, a phrase in the contract requiring the district to maintain all benefits may sound reasonable. The problem, said James Moran, executive director of the New Jersey Association of School Administrators, is that a blanket

23 Desirable Traits in a Negotiator

The following checklist of desirable traits in a negotiator is based on interviews for this report and a review of recent articles on the subject:

- ✔ Self-confidence (can continue in the face of hostility on the other side of the table and insurrection on the team).
- ✔ Ability to listen (can detect willingness to compromise).
- ✔ Good physical condition (to withstand long sessions).
- ✔ Creative mind (able to devise four or five solutions to a problem).
- ✔ Credibility with the opposition.
- ✔ Ability to think on one's feet.
- ✔ Toughness (a conviction of the rightness of one's position).
- ✔ Knowledgeable (about state law, district conditions and negotiating techniques).
- ✔ A sense of humor (helps break tension).
- ✔ Ability to maintain control of the course of negotiations and of one's team.
- ✔ Fair.
- ✔ Ethical.
- ✔ Sincere.
- ✔ Honest.
- ✔ Patient.
- ✔ Persuasive.
- ✔ Determined.
- ✔ Prepared.
- ✔ Integrity.
- ✔ Self-control.
- ✔ Tolerance.
- ✔ Thick skin.
- ✔ A poker face.

statement includes as benefits many things management never intended to include. Then a grievance goes to arbitration, and the district's defense is: "We never said the teacher would automatically get a preparation period." The arbitrator responds: "That's a benefit, isn't it?"

Another potential hazard — if both sides are untrained — is that contract language is less likely to be written clearly, which can lead to more grievances.

Most practitioners and consultants interviewed for this report favored the use of inside negotiators who remain in the district to see that the carefully prepared contract is administered correctly. "Lots of times, it is just as difficult to administer a contract as to negotiate one," Bob Barrett, employee relations director for the Brevard County (Fla.) Public Schools, said in an interview. "There's a place for outside negotiators, and it's a temporary place," Barrett maintained. Brevard County hired AASA legal counsel Fred Lifton of Chicago to negotiate with the district's two employee unions, and Barrett participated in the negotiations as on-the-job training. Barrett rose through the ranks in the district, serving as a principal before becoming director of employee relations.

One caution: Jerry Knoll of Lebanon, Tenn., has negotiated both as an insider and an outsider. He currently serves as assistant superintendent for employee relations for the 10,000-pupil Wilson County Public Schools. He mentioned this precaution in using an outsider: The negotiator must learn a great deal about the district to represent it well at the table. Note, however, that the problem diminishes if the same outside negotiator is used in subsequent years.

"Unless the school system has a history of hostilities between labor and management, unfair labor practices or low salaries, inside administrators can probably negotiate a better contract than we give them credit for," Knoll continued. He stressed that the insider should have training in negotiating skills and contract administration. In a district with several administrators, the better choice would be an assistant superintendent, rather than the superintendent or a principal.

Note: The administrator designated to negotiate for management should have some clout in the district in order to have credibility with union negotiators.

A Rand Corporation study, *Organized Teachers in American Schools*, concluded: "Ideally, the district's chief negotiator should probably be someone who reports directly to the superintendent, has enough authority to obtain necessary information from district administrators, and has access to the school board, at least through the superintendent."

The case for outsiders: Those favoring the use of outsiders generally cite three reasons:

- District personnel often lack the expertise and experience for the complex task of bargaining.
- Administrators with many job responsibilities cannot do justice to bargaining and their other duties.
- Hiring an outsider is less expensive than paying a full-time staff member.

All persons contacted about negotiators emphasized that management's spokesperson must match or exceed the union negotiator in skill and knowledge of the issues. In states where teachers are highly unionized, the teacher negotiating team is represented by a regional or state-level professional who specializes in negotiations. To counteract a potential imbalance of power at the bargaining table, school board associations in some states (e.g., Illinois, Michigan and Washington) provide negotiators to school districts on a fee basis.

Who hires outsiders? Districts of all sizes — except the largest — retain outsiders. Districts turn to individuals, organizations or large firms. One example: The Michigan Association of School Boards provides negotiations services to 125 districts, and most of them have fewer than 7,000 students. On the other hand, one Michigan district with 4,000 students has a full-time negotiator because it negotiates with seven unions.

An outside attorney negotiates for the 15,000-pupil Canton (Ohio) City Schools because the public would not allow or accept a full-time staff member whose only duties were negotiating and administering the contract, personnel director William Hunter said in an interview.

Another reason Canton hires an outside negotiator is that Hunter, who handles contract administration, has too many other responsibilities to do justice to both negotiating and personnel. "It would be naive and self defeating to try to be chief negotiator as well as run my office every day," Hunter said.

Costs can significantly affect the decision to hire an outsider. One outside negotiator put the cost of handling the "average negotiations, in the absence of a strike," at $4,000 to $5,000. Another district pays an attorney approximately $20,000 to negotiate a contract and advise on contract administration.

Money used to hire an outsider can be money well spent, one district administrator said, "even if it

Educating Principals on Bargaining

What's the role of the union in the collective bargaining process? What's the role of management? Where do principals fit in?

"Unless the roles of the parties are made clear, frustration can result from the bargaining process," says *Labor Relations for Principals and Other School Managers*. Having thus set the stage, the report goes on to describe the role of principals and supervisors, the union's role, activities during negotiations, impasse, strike and handling grievances.

The report offers a concise list of do's and don'ts for management. Among the do's: preach and repreach the district management principles, realize that politics are important to the union, prepare a strike contingency plan. Among the don'ts: Don't try to use union methods, don't use retaliation, don't corner the union.

The report is available from the National School Labor Relations Service, 1620 Eye St., N.W., Washington, D.C. 20006; single copy, $5.

sticks out like a sore thumb in the budget." For one thing, a lawsuit over one clause can cost $20,000 to $30,000, including appeals, noted Brian Braun, an attorney who negotiates for districts through the Illinois Association of School Boards. IASB negotiators save districts more money through well written contract language than in more obvious areas, such as salaries, he added.

Braun cited another advantage of using outsiders. He noted that even well trained insiders are insulated from trends in other districts. The insider may compensate for this by meeting with counterparts in neighboring districts, which has some advantages, but which can lead to "regionwide mistakes," Braun said.

An alternative: Districts may want to consider hiring an outside professional to critique the present contract or to go over the union proposals with the inside negotiator.

What To Look For in a Negotiator

Negotiating is both an art and a science. The sense of timing and the amount of pressure to apply at the bargaining table are an art — one that is partly inborn and partly gained through training and experience. The homework and calculations required when preparing proposals are more of a science.

Some of the traits and talents deemed necessary for a negotiator have been pinpointed over the years by Chicago attorney Fred Lifton and others. They include:

- Time and timing. Negotiations takes a certain amount of time and good timing.
- Tenacity. The negotiator must be extremely patient and must not be the type who gives up easily.
- Tact. The negotiator must recognize that the union negotiator has a legitimate role to play. Paternalism toward the teacher team must be avoided.
- Technical knowledge. The negotiator must know the state laws that affect collective bargaining, know the rules of the game and be skilled at writing clear and precise contract language.
- Talent. Steering the conversation to management's advantage and knowing when to take a hard stand are but two of the characteristics that qualify under this category.
- Tolerance. One characteristic a negotiator must have, mentioned by all those interviewed for this report, is tolerance. The management negotiator must never lose his or her temper. When that happens, the negotiator has lost control. An outsider may have the edge in this category, according to one district administrator. "With an outsider at the table, neither side is as likely to focus on personalities and to regurgitate past hurts," he said.

Additional characteristics: James Moran of the New Jersey Association of School Administrators added two additional requisites for negotiators: toughness and integrity.

"It's not a verbal or physical toughness, but a mental toughness . . . a mental conviction that something is either right or wrong," Moran said. "Right is that which properly belongs to the employees, what employees are entitled to. Wrong," he added,

"is that which ought not to be given to employees.

"If you know that, and you have conviction about it, then you probably have sufficient courage to carry it forth at the bargaining table," he said.

Integrity, in Moran's opinion, is the negotiator's only stock-in-trade. "If you tell somebody you'll do something, then it is incumbent upon you to deliver. And," he noted, "I hold the other side accountable in the same way."

Should the negotiator be an attorney? Many of the respondents to the **Critical Issues Survey** said the outside negotiator they use is their legal counsel. That person, while having the advantage of knowing the law and the school district, may not be the best choice, according to some persons interviewed for this report. Brian Braun, himself an attorney, said it is more important to have a person knowledgeable about collective bargaining than a person with a general knowledge of the law.

If there is no attorney on the negotiating team, however, the district may want its attorney to review the contract even prior to tentative agreement on contract terms. Waiting to have an attorney look over the contract just before ratification is not advisable because the district team will lose credibility if it changes its bargaining position at this point.

Hiring an Outsider

Probably 500 persons serve as outside negotiators throughout the country, but only about 40 are really good at it, Moran said. "And they all charge about the same amount of money." He recommends hiring an outside negotiator on the same basis a district would hire a regular member of the administrative staff, that is, through interviews and by checking references.

When contacting a former client of a negotiator, a district should find out if the negotiator was able to achieve a settlement that protected management. Additional things to find out about the potential negotiator include:

- Does the negotiator have a consistent track

The Insider/Outsider Scoreboard

Inside Negotiator

Advantages

Remains in the district after ratification to administer the contract.

Knows the history of bargaining in the district.

Is likely to have more credibility with the other side.

Offers contract-to-contract continuity to negotiations.

Disadvantages

Is insulated from trends.

If the superintendent or a principal is used, hostilities from the table could hinder the person's effectiveness following negotiations.

May not have the training and background to match that of the union negotiator.

Outside Negotiator

Advantages

Hard feelings leave with the outsider.

May cost less than a full-time staff person.

With professionals on both sides of the table, less personal animosity generally results.

Frees district administrators to continue their regular jobs.

Can give an objective appraisal of management's negotiations objectives.

Disadvantages

When the outsider leaves, someone must administer the contract. That person may not be as familiar with the language or intent of contract provisions.

The superintendent may have to spend a large amount of time helping the outsider.

The public may criticize the district for paying a high fee to an outsider.

The outsider may seek "spectacular results" to enhance the chances of being hired elsewhere.

Training the Negotiator

Many in-district chief negotiators move up from another position on the administrative staff. Often, their training consists of serving on the negotiating team for a year or two under an outside professional negotiator and supplementing their understudy role by reading and attending seminars.

Short-term seminars are offered by:

- The AASA National Academy for School Executives, in cooperation with the National School Labor Relations Service.
- Regional services specializing in collective bargaining, such as the Florida School Labor Relations Service.
- State school board and school administrator associations.
- Boards of cooperative services, county offices of education and intermediate units.
- The National Association of Educational Negotiators.

Another way to supplement knowledge and skills is by forming an organization of counterparts in a geographic region to compare information on negotiating trends and techniques.

All of those steps are worthwhile as far as they go, but more in-depth training is desirable when a district staff member expects to confront a sophisticated regional or state-level union negotiator. One highly successful program offering in-depth training is the Executive Level Labor Relations Fellowship Program. It is sponsored by AASA's National Academy for School Executives, the Labor Management Relations Service of the U.S. Conference of Mayors and the National School Labor Relations Service. It is open to negotiators from school districts and city, county and state governments.

Fellows selected for the program spend one week at a university receiving intensive orientation and training, followed by two to four months interning under well qualified mentors who work for public employees or for consulting firms that negotiate for public employers.

Since 1972, approximately 100 persons have completed the program. "It was probably one of the most enlightening experiences I've ever had," said Tom Dillingham, personnel relations specialist for the Montgomery County (Md.) Public Schools. Dillingham and John Donato, then an assistant superintendent in Hernando County, Fla., interned with James Moran of the New Jersey Association of School Administrators. At the time, Moran was negotiating contracts for the newly created New Castle County School District, a court-ordered consolidation of 11 districts in the Wilmington, Del., area. After elections, 38 bargaining units were amalgamated into seven. The issues were so complex that mediation, a strike and involvement by the governor all transpired before agreement was possible.

Watching Moran negotiate "was like watching a master do it," said Donato, now a superintendent in Hartford, Wis. He was able to apply his new skills almost immediately as he negotiated a three-year contract with employees who previously had a one-year contract.

Supt. William Grady of the Passaic County (N.J.) Public Schools described his fellowship as "superb." As an intern with a law firm in Jersey City, N.J., Grady served as a "silent partner" in negotiations with police and firefighters. "I extol that kind of experience. It's far different than reading about it," he concluded.

School districts nominating a fellow are expected to pay travel and living expenses, program tuition and the employee's regular salary. The program sponsors prefer that the fellow spend three months in the internship, but other arrangements are possible. Grady, for example, had an internship within commuting distance and was away from his job a matter of days. Donato alternated between Florida and Delaware, using accumulated vacation time for the internship. Dillingham, who spent three months in Delaware during negotiations, stresses the advantage of "being there every day."

For more information about the program, contact either Jerry Melton of the National Academy for School Executives (1801 N. Moore St., Arlington, Va. 22209; phone 703/528-0700) or Frank Forbes of the National School Labor Relations Service (1620 Eye St., N.W., Washington, D.C. 20006; phone 202/293-6790).

record of strikes or other disruptions?
- Has the negotiator ever been charged with an unfair labor practice?
- Could the superintendent work well with and have confidence in the negotiator?

Selecting the Team

Size: Districts responding to the **Critical Issues Survey** use collective bargaining teams ranging from one to twelve members. The size of the team is influenced by the size of the union team, the size of the district and the complexity of the contract.

Practitioners interviewed for this report generally favored management teams of three to five members. Warren Eisenhower, assistant superintendent for personnel for the Fairfax County (Va.) Public Schools, recommends keeping the team small — three to four members — because compromise is easier. Ultimately, he explained, one or two management team members make an offer to one or two union team members. The agreement must be "sold" to the rest of the team before it can be sold to the school board and the teachers.

Make-up. Team members should be selected for their expertise and the constituency they represent. Both prior to and during negotiations, each team member will assist in gathering information to fortify management's position. Team members may be drawn from: the district personnel office, business office, elementary principals, secondary principals and central office administrators whose duties relate to contract provisions.

Local considerations. A district may need to consider local political circumstances when naming its team. The Denver Public Schools, a district with 67,000 pupils, has nine members on its team. Darold Bobier, staff relations specialist, noted that the team must be balanced ethnically, sexually and professionally. In addition to selecting elementary and secondary principals and central office administrators, Bobier must consider how many of the prospective team members are male, female, black, white or Hispanic.

Board members and superintendents as team members. As was the case with the chief negotiator, the survey results contradict the advice given by experts. One-third of the districts responding said they include board members on their negotiating teams. The total rises to 46 percent with the addition of the 13 percent that use a board member as chief negotiator.

The total is lower for superintendents. Slightly more than one-fifth, 21 percent, of the districts said they include the superintendent on the bargaining team. In 38 percent of the responding districts, moreover, the superintendent serves either as chief negotiator or as a member of the team.

Experts cite similar reasons for not having the superintendent and board members as part of the team as they do for not having them as chief negotiator. These additional reasons are given:
- The union negotiator may divert discussions from the issues to the personalities of the superintendent and board members, if they are on the team. Next to the superintendent, board members are most likely to be singled out as "bad guys" during negotiations.
- The presence of the superintendent may keep other team members from speaking candidly in caucuses.
- Some board members may have been elected with support from teachers, which puts them in an awkward position.
- Board members already spend many upaid hours on district business.
- Some board members may talk too much, speaking out when they should be quiet.

An opposing view: Small districts need school board members on the team because of an inadequate number of administrative staff to fill the positions, said Ronald Snyder, superintendent of the 2,000-pupil Red Bank Valley School District, New Bethlehem, Pa. Having board members present improves communication, instead of having the information from the negotiator filter through the superintendent to the school board, he added.

One plus, in Snyder's view: When an outsider is negotiating for management, the presence of board members increases credibility with the union. Fred Lifton agrees. He values the presence of board members on a negotiations team, he said.

"Some board members relate better to each other than they do to the negotiator or administrators," New Jersey's James Moran said. He prefers, however, that board members not be present. "It puts too much pressure on them," he explained. "It makes them very vulnerable to being brow-beaten."

One caution from Lifton: Board members who serve on the team must follow table discipline, which sometimes means sitting quietly while the chief negotiators wrangle over a provision.

Note: A majority of board members should not attend a negotiating session. In many states, attendance by the entire board could violate open meeting laws, unless public notice requirements were fulfilled.

What About Principals?

Experts and practitioners favor the inclusion of principals on bargaining teams because so much that is bargained directly affects their job. "It's extremely important for them to be included," Lifton said, not only because of their knowledge of school conditions and the effect of contract clauses but also because principals need to feel that their views are represented at the bargaining table.

Of the districts responding to the survey for this report, 28 percent included principals on bargaining teams. Others exclude principals because of a desire to protect them from any adverse fallout from negotiations.

The arguments most often raised in support of and in opposition to having principals on management's negotiating team include:

In support: The principal can pass a note across the table to alert the negotiator when the union speaker raises a spurious argument. After negotiations, the principal can brief colleagues on the new contract, stressing aspects they will find most important. Another plus: Including a principal as a representative of his or her peers shows them that their opinions count, thereby strengthening the management team.

In opposition: A principal's presence on the team could drive a wedge between that administrator and the teachers at his or her school. In districts where principals themselves bargain, questions will be raised about the appropriateness of including principals on management's bargaining team.

Getting Ready

The importance of preparation cannot be overemphasized. An inadequately prepared management team cannot hope to achieve its objectives in negotiations. The manner of preparation will vary with the size of the district and its organizational structure. But whatever form preparation takes, the process should include seven essential steps:

1. Anticipate union demands.
2. Evaluate union demands.
3. Assemble demographic information about the employee group.
4. Assemble internal and external financial information.
5. Develop management's negotiating position.
6. Obtain parameters from the board.
7. Assemble information about the employee team.

Step 1: Anticipate union demands. A good place to start is the district's grievance file. A large number of grievances may signal a need to change a provision of the contract. An administrator should consult notes from the last round of negotiations. Items not granted are likely to be on the union's agenda again. So are items mentioned in union publications, in speeches by union leaders and in resolutions passed at the union's national convention. Another

Should the District Bring Demands to the Table?

As a general rule, the number and kind of demands brought to the bargaining table by management depend on the number and kind brought by the union.

However, a school board may want to consider bringing *no* demands to the table. Although most negotiators like to bring management proposals as trading chips, these proposals can be liabilities under two circumstances: when the contract is silent on a management right and when a potential problem has not arisen.

If the contract is silent on a management right, arbitrators will assume that right belongs to management.

If management raises an issue at the table but fails to get it into the contract, arbitrators usually rule that a right *raised* and *not won* is a right *waived*.

By the same token, if contract language is ambiguous, for example, on the issue of teacher attendance at after-school meetings, an arbitrator will look at past practice in determining whether teachers must be compensated for the extra time. By raising the issue of requiring teacher attendance at meetings, the district may invite a future grievance that would not have been filed otherwise.

resource is the union's master contract for the state in which the negotiating district is located. In addition, a check with other districts in the area may reveal demands that will turn up on the union's list.

Step 2: Evaluate union demands. Check state law, recent court decisions and decisions made by the state employment relations board to determine what is negotiable. Many states — through laws or decisions — have established areas of bargaining that are mandatory, permissive and illegal. Mandatory subjects must be placed on the table, permissive subjects may be accepted and illegal subjects must not be bargained. In states with no collective bargaining law, the scope of bargaining generally is determined by what boards agree to bargain. Note: Refusal to bargain on a subject may lead to a strike.

When analyzing a large number of demands, it is helpful to group them in two categories: economic and non-economic.

After analysis, the proposals can be grouped under four headings: acceptable, acceptable with modifications, unacceptable because it inhibits managerial prerogative and not feasible. Feasibility is determined by costing out the proposals, a topic that is covered in the chapter on "Salaries."

Step 3: Assemble demographic information about the employee group. For teachers, this would include the total number of teachers, the number by age groups, the number by steps on the salary schedule, the average number of days of sick leave taken by teachers, and the average number of personal days used (and whether those days were taken on Fridays or Mondays or before or after holidays).

Step 4: Assemble internal and external financial information. This would include: anticipated revenues and expenditures of the district during the life of the contract, the amount of money currently paid for salaries and fringe benefits, and salaries and fringe benefits paid in "comparable" districts. Comparability may be determined by size, geogaphic area, assessed valuation or other items.

Information on comparable districts may be available from: the state department of education; state professional organizations, such as school boards, administrators or personnel administrators; or the school of business administration of a nearby university.

Two additional ideas to obtain the data: A group of school districts could cooperate to sponsor a survey, or a department of a nearby university might be willing to assign graduate students to compile the data for a geographic area.

The Tennessee Association for School Personnel Administration, for example, compiled a 35-page summary of salaries and fringe benefits for all Tennessee school districts.

On the local level, the Denver Area School Superintendents Council sponsors a management-information service based at Aurora (Colo.) Public Schools. Participating Colorado districts send in figures on topics such as salaries of classified personnel and coaches. In addition, salary information for secretaries and other office employees is compared with amounts paid state and city employees with similar job titles.

On the national level, Educational Research Service prepares approximately 15 reports for school management each year. Among the areas covered are salaries, fringe benefits and courts and the law.

Another service is the "ERS Composite Indicator of Changes in Average Salaries and Wages Paid in Public Schools" or CIC. It is a statistical tool to help school administrators gauge and compare overall annual changes in salaries and wages paid by school systems. ERS says this service "is comparable with other indicators of economic change, especially the Consumer Price Index."

Finally, ERS offers to member districts the "Local School Budget Profiles Service." This service enables a district to receive financial data on 42 budget items from 18 other school districts with which it would like to have its budget compared. Participating districts provide the budget information to ERS as part of a questionnaire they fill out in early fall.

For a list of ERS publications and information on annual service rates, contact Educational Research Service, 1800 N. Kent St., Arlington, Va. 22209 (703/243-2100).

Note: Both the management and the union negotiations teams will try to cite data on comparability favorable to their bargaining positions. Thus, arguments over comparability are common. District administrators should provide as much information as possible to their negotiating team, "so there's something to argue with," noted one negotiator.

Step 5: Develop management's negotiating position. Before developing management's objectives for negotiations, the current contract should be evaluated. Each contract clause should be compared with actual district practice, and grievance cases should be examined to determine how their disposition affects the ability of administrators to manage. No review would be complete without consulting school

How Much Power for the Negotiator?

Should a board give its negotiator the "bottom line" from the beginning? The answer to that question depends on the person asked. Superintendents tend to caution against telling the negotiator everything, while negotiators say they must know "the big picture" to be effective.

The negotiator must know what the district can afford — the real bottom line, said James Moran, who often bargains as an outside negotiator. If the superintendent and board do not have "total faith" in the negotiator, they have the wrong negotiator, he added.

If board members' goals are totally unrealistic, such as "give 'em nothing and make it retroactive," the negotiator may refuse to represent them, Moran said. First, however, the negotiator will try to convince them of those things management can reasonably expect to protect and those things employees ought to get. Moran offered this example: If the going rate for salary increases is 7 percent, the board may be able to settle for 6.8 percent, but not for 5 percent. Moran, in other words, will do the best he can for a district, but the district must trust his judgment that it is the best.

Denver's Darold Bobier believes that the relationship between the negotiator, superintendent and board members "should be complete, open and above board."

The negotiator may go back to the board and make some trades between fringe benefits and salaries, but the total dollars should remain the same. The problem with an eroding bottom line, Bobier said, is that the negotiator loses credibility with the opposing team. "When that happens, the other side plays games."

Another view comes from Roger Dahl, director of the National School Labor Relations Service, Washington, D.C. "The ideal is to have clearcut objectives from the beginning," Dahl said. "But practical people will realize that those objectives may well have to be modified by circumstances in the negotiations process."

The negotiator definitely needs "to have the authority to reach agreement," but political circumstances may prohibit spelling out the bottom line far in advance of settlement, Dahl noted. If the board, for example, has members who were elected with union support and the balance of the board feel that the final figure will leak out prematurely, the entire board may not see the bottom line very early in the process.

Also, when the district is new to bargaining or when the outsider has not represented the district before, Dahl said, the board often will keep a closer rein on the negotiator, allowing movement only in short steps.

A good negotiator, Dahl, concluded, knows when he or she has the bottom line and when it will be necessary to check back frequently for more direction from the board.

principals. Often, districts also consult central office administrators to find out how contract provisions affect their jobs. In a large district, the review may take the form of a written survey. In a small district, the contract may be discussed in an administrative staff meeting.

Here are two other models for preparing management bargaining proposals:

1. A year-long negotiations preparation committee was formed in the Canton (Ohio) City School District to prepare for bargaining with teachers. The committee was headed by William Hunter, director of personnel and the insider charged with contract administration. Other members of the committee were the directors of finance and research, the superintendent, and principals from a senior high, a junior high and two elementary schools. The committee examined the contract and past grievances, looking for trouble spots and "good" provisions. In between meetings, committee members polled their constituents for suggestions or gathered financial data. Four of the committee members became part of the management negotiations team (the fifth was an outside negotiator). The rest of the committee served as a resource to the team.

2. Consultation with four organized groups is sought by Darold Bobier, staff relations specialist, in preparing negotiations proposals for the Denver Public Schools. The four groups are: a school board subcommittee, principals, supervisors and the superintendent's cabinet. About six months before negotiations with teachers start, Bobier begins meeting with small groups of principals, curriculum supervisors and directors of special programs to find out which items should be retained and which changed in the contract.

The contract articles coming out of the meetings are sent to the superintendent and his cabinet. They eliminate some articles, combine some and add others. Next, the proposals go to the three-member labor relations subcommittee of the school board. About three months before negotiations begin, the subcommittee, meeting with Bobier and his boss, considers and refines the language of the proposals and places them in priority order. The board members also decide which proposals may be used for trade-offs, which are important, and which the district would be willing to take a strike over.

In Colorado, meetings of a majority of the school board are open to the public. For this reason, the entire board never meets to discuss negotiating strategy. Instead, the subcommittee members consult informally with other board members to receive their opinions on the issues being discussed.

Step 6: Obtain parameters from the board. Experts say the board has essentially four responsibilities in negotiations:

- Selecting the negotiator and the team.
- Setting the parameters, or outside limits, on negotiations.
- Establishing procedures for communicating with the board.
- Ratifying the final contract.

The negotiator, as the staff person or consultant with professional experience, should make recommendations about the make-up of the team, but the final decision should be made by the board.

The parameters include financial limits and boundaries on items that affect managerial prerogatives. The board may say, for example, that the team may agree to an evaluation clause, as long as it includes only procedures and leaves the content to management.

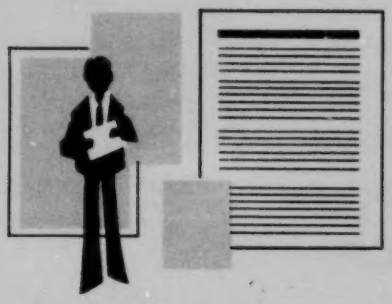
Communicating with the board is handled in various ways. A board usually gives the negotiator general guidelines, and then receives regular reports on the progress of negotiations. When board members are not on the team, practitioners advise having the superintendent convey information to the board. Under this philosophy, the negotiator returns to the board only when an unforeseen problem arises, and further instructions are needed. In addition, the board could request a meeting with the negotiator based on information in the progress reports. The board's ultimate authority in the process rests in making the final decision of whether to ratify the tentative contract.

Step 7: Assemble information about the employee team. The district's table strategy will be influenced by the information it has on the opposing team. Denver's Darold Bobier recommends checking with the appropriate principal or assistant principal for the following information about teachers on the team: major interest areas, the degree of credibility that each teacher has with faculty and how active the teacher is in the employee organization. Teachers with high credibility will wield some power in caucuses. If the district can offer something of great interest to a teacher member of the union team as a trade for something the district wants, the teacher will probably argue the district's case in the caucus, Bobier explained.

To supplement the advance information, Bobier assigns each member of the management team to watch a member of the other team for body language that will give clues to their interests and their influence with the chief negotiator.

Note: The union probably has done a thorough job of gathering information about the management team. If board members are on the team, for example, the union team will probably know the members' age, education, organizational memberships, religious affiliation, occupation, estimated income and property ownership, marital status, whether members' children attend public or nonpublic schools, political party affiliation, why the member sought elective office, school board voting record, which voting bloc members vote with, and peers' opinion of the members. Such information may be used by the union to try to obtain the results it seeks in the negotiations.

Chapter III



Contract Language and Management Rights

Acknowledgment

This chapter was prepared upon request of the editor by Frank Forbes, coordinator of the National School Labor Relations Service. NSLRS, a service sponsored by AASA and the National School Boards Association, is available to help school districts with school labor relations problems. For further information, contact Forbes at the address given at the end of the chapter.

All school managers who are involved in labor relations — from elected board members to principals — agree that specific contract language can make or break a district. Many school negotiators would assert that the language of the agreement is more important than the economic settlement for a given year.

Management training programs and texts always advise districts "to protect your ability to manage." Yet, after 20 years of bargaining history, districts have little evidence of where they stand from a management perspective. Teacher unions, on the other hand, keep detailed computerized records of all contract clauses throughout the country.

To gain some detailed information on the status of some areas of management rights, the National School Labor Relations Service analyzed 95 of the written agreements returned with the **Critical Issues Survey** for this report.

The contracts selected represent various states and regions and school district sizes. While these breakdowns are not perfect, they do give a broad range of collective bargaining practices from states with no teacher bargaining law, such as Ohio and Illinois, to states with many years of experience under a statute, such as Wisconsin, New Jersey and Washington. Twenty-seven states are represented. States not represented did not send any contracts.

Size of Districts Selected

18	Districts under 1,000 students
27	Districts of 1,000 to 2,500 students
35	Districts of 2,501 to 10,000 students
6	Districts of 10,001 to 25,000 students
7	Districts of more than 25,000 students
2	Size unknown
95	

Geographical Distribution

Northwest (14 contracts)		South-Southwest (8 contracts)	
4	California	2	Colorado
2	Montana	3	Tennessee
3	Oregon	3	Florida
4	Washington		
1	Wyoming		

Midwest (44 contracts)		Northeast (29 contracts)	
7	Illinois	1	Connecticut
8	Indiana	2	Delaware
11	Iowa	1	Maryland
1	Kansas	2	Massachusetts
3	Michigan	1	New Hampshire
3	Minnesota	2	New Jersey
4	Nebraska	9	New York
1	North Dakota	2	Ohio
2	South Dakota	9	Pennsylvania
4	Wisconsin		

Bargaining Diversity

Four states included in this analysis (Colorado, Illinois, Ohio and Wyoming) do not have teacher bargaining laws, yet they negotiate written contracts.

On the other hand, Connecticut, Iowa and Wisconsin use compulsory binding interest arbitration for bargaining impasses, while Minnesota, Oregon and Pennsylvania grant teachers a limited right to strike.

The scope of bargaining (i.e., subjects which are mandatory or permissive areas of negotiations) varies greatly across these states and accounts for much of the difference found among the contracts. Nevertheless, this analysis will focus on contract language because educational management issues are similar for every state.

Cautions

Several caveats are necessary, before presenting the results. First, this author approaches school labor relations from a positive management perspective which emphasizes management's duty to act and the union's duty to react. Further, this author holds that management retains all rights except those specifically negotiated away. Many, but not all management negotiators follow this philosophy. Therefore, some negotiators may not agree with the "evaluations" of these contract provisions.

There is no one "right way" on school labor relations, so if your district's agreement works for you and you have thought through and answered the questions raised here, keep up the good work.

Secondly, examining single contract clauses in isolation from the rest of the agreement admittedly is artificial. Given substantial additional resources, it might be plausible to develop an overall rating scheme for an entire contract.

Ten areas have been selected for analysis, the first five of which are the most important. These are: board or management rights, zipper or waiver clause, "narrow" definition of a grievance, maintenance of benefits or standards and no strike. The other five — binding grievance arbitration, teacher evaluation, class size, reduction in force (RIF), and school calendar — also are significant, but they are more affected by the specific state statute involved. They were chosen because they are typically areas of conflict over the meaning of management rights. Also, they are prime union goals for many negotiations.

One final bit of advice: After examining the findings presented here and applying them to your district's situation, do not attempt massive language changes in your next round of bargaining without the full support of your board and management team. Even then, develop strategies and tactics carefully to avoid unnecessary confrontations.

Survey Results

One part of the survey for this report asked respondents to indicate whether a given clause is found in their agreement. The following table presents the percentage of respondents (N=711) who indicated they have a clause:

Percent of Contracts with Clauses	
53%	Management rights and/or district rights clauses
21%	Maintenance of benefits/past practice clause
34%	No strike clause
41%	Zipper clause (contract cannot be reopened on specific item)
6%	Cost of living adjustment tied to Consumer Price Index
39%	"Narrow" definition of grievance
60%	Grievance arbitration
23%	Class size clause
45%	Teacher transfer clause
17%	Job security clause
50%	Teacher evaluation
33%	School calendar
28%	Class hours

Since specific definitions were not provided for the items, some confusion occurred. For example, a significant portion of the persons who said they have a no strike clause in their contract were referring to their state law, not the written agreement. Therefore, care is required in making generalizations based on this list. Nevertheless, it is interesting to note that the item appearing most frequently in formal collective bargaining contracts is grievance arbitration, usually final and binding. This is not surprising since many state bargaining laws mandate it, and in the private sector grievance arbitration is found in over 90 percent of agreements. An encouraging finding is that a board or management rights clause is part of 53 percent of the contracts. Many board negotiators believe it to be the single most important provision for the district.

Contract Analysis

Presented below are the 10 areas of the agreements which were examined in the 95 contracts. In

each instance the definitions and justifications used are outlined and the nationwide and regional results are given, with appropriate examples. The examples are guides only and should not be used in every instance.

Board or Management Rights

Percent of Contracts With Management Rights	
100% Northwest	62.1% Northeast
47.7% Midwest	75% South-Southwest
62.1% Nationwide	

A strong management rights clause is important because it reinforces statutory rights of the board and aids in limiting the authority of an arbitrator in the grievance process. If made a part of the board packaging during the initial negotiations, it is usually obtained easily. If added on later, its "cost" will be expensive.

Generally, there are two types of management rights provisions: one type which includes a list of specific rights, and the other which simply states that the board retains all discretion not modified by the agreement. Both types qualified for inclusion here.

The Bellevue (Wash.) School District #405 has a good specific form provision. It states:

"Management rights and functions, except as limited by this agreement, shall remain with the district as employer. It is recognized, by way of illustration, that such rights and functions include but are not limited to:

a. control of the management of the district; the supervision of all operations; the methods, process and means of performing any and all work; the control of the property; the composition, assignment, direction and determination of the size of its working forces; and the right to maintain and protect all property and equipment;
b. the right to determine the work to be done by employees in the unit;
c. the right to introduce new or improved operations, methods, programs, means or facilities;
d. the right to hire, schedule, promote, demote, transfer, release and lay off employees; and the right to suspend, and discharge employees according to state statutes and district policy, and otherwise, to maintain an orderly, effective and efficient operation.

The district shall adhere strictly to all federal and state statutes and regulations and the Constitution of the state of Washington.*

The exercise of the district's rights stated herein does not modify the right of an employee to appeal through established grievance procedures when an act of the district is construed as violating this agreement.

The exercise of the district's rights stated herein is a function of management. However, the district shall announce proposed changes in policies reasonably in advance of making changes and shall obtain advice concerning these proposed changes . . . "

Another similar clause is found in the Janesville, Wis., contract. It states:

Except as specifically modified by this agreement, the board retains, without limitations, all powers, rights and authority vested in it by laws, rules and regulations, including but not limited to: the right to manage and control school properties and facilities; select and direct personnel; determine, manage and control the school curriculum; relieve employees from duties; take such action as it deems necessary to maintain efficiency in the operation of the school system; determine the methods, means and personnel by which the functions of the school district will be performed. The exercise of these rights shall not be subject to the grievance procedure.

Those districts without similar protection may want to consider it for inclusion in negotiations. However, a risk is involved. If the district is not successful in obtaining the clause, the union will argue later in grievance proceedings that the district does not have some rights which it was unable to negotiate into the contract. Check with your negotiator and legal counsel.

Narrow Grievance Definition

Percent of Contracts With Narrow Grievance Definition	
69.2% Northwest	75.9% Northeast
86.1% Midwest	75% South-Southwest
78.8% Nationwide	

Under most written labor contracts, the definition of a grievance determines which employee complaints or problems are subject to final and binding grievance arbitration. In order to avoid losing policy matter and other issues outside the contract in arbitration, a narrow definition is recommended which limits grievances to the specific written contract. This advice holds even for districts that do not have binding grievance arbitration, since it is often negotiated at a later date when a change in the concept of a "grievance" is difficult to make. Such an approach does not preclude other complaint procedures. It only limits what an arbitrator can decide during the specific terms of the agreement.

An example of such a definition is found in the East Islip, N.Y., contract. It states:

A "grievance" is a complaint by a teacher, a group of

* This is considered an incorporation clause and should not be included in a negotiated contract.

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teachers, or association representatives, based upon an alleged violation of, or variation from the provisions of this contract or the interpretation or application thereof.

Woodburn School District 103C, Marion County, Oreg., includes a procedure which divides complaints into arbitrable grievances and policy complaints which are not subject to arbitration. The district contract says:

A grievance is a claim by the teacher or the association based upon a difference of opinion concerning the interpretation or violation of this agreement or established board policy. The parties recognize there are two types of grievances:

A contractual grievance or a grievance that is claimed by a teacher or the association based upon a difference of opinion concerning interpretation or application or alleged violation of this agreement. Such grievances shall be appealable to arbitration.

A policy grievance is a claim by a teacher or the association based on a difference of opinion concerning the interpretation, application or alleged violation of established board policy. Such grievances shall be appealable through level three of the grievance procedure.

Avoid the following type of definition found in a district in a Midwestern state:

A grievance is a claim whereby one or more professional staff members:

1. Allege an infringement or privation of his or their personal, professional or other rights not contained in this contract; or
2. Allege an infringement or privation of his or their personal, professional or other rights under the terms of this contract; or
3. Allege a misinterpretation or misapplication of board policy or administrative rules or regulations; or
4. Allege a misinterpretation, misapplication or violation of any provision of statute of this contract.

Such a procedure leaves the district wide open to every kind of complaint. In effect, the union could govern the school through the grievance arbitration process. Particularly troublesome are the terms "private, personal or professional rights." What are they? They seem to encompass everything.

No Strike Clause

Percent of Contracts
With No Strike Provision

57.1% Northwest	51.7% Northeast
37.5% Midwest	62.5% South-Southwest

38.9% Nationwide

In the private sector tradition, a no strike provision for the term of the agreement is basic to every negotiation. It is part of the reason an employer negotiates. Since no strike provisions in state statutes do not prevent strikes, additional protection can be gained through a negotiated no strike clause. It also puts the union on record against striking and involves the union in the enforcement of the clause. Finally, this provision may allow the employer to seek monetary damages in case of a "wildcat strike."

Perhaps the strongest such clause among those analyzed was found in the Woodlake, Calif., agreement. It states:

The association and district agree fully that the primary mission of both parties is the education of the district's children. Accordingly, the association, its agents and members agree that there will be no strike, no work stoppage or refusal to enter upon any district premises during normal work hours during the term of this master agreement.

The association recognizes and agrees that it has a duty and obligation to the district and to the children being educated within the district to actively and affirmatively advise and direct any member or members of the association engaging in any form of deliberate work stoppage to immediately cease such action or face charges of having abandoned their position or deemed as having voluntarily resigned their position.

The association recognizes the right of the district to discipline any employee who is in violation of this article. The district recognizes the rights of the employee to a hearing before the board and that its discipline will be consistent with the law.

Nothing contained in this article shall be deemed as depriving any employee of his/her rights as guaranteed in the First Amendment of the Constitution.

Zipper Clause

Percent of Contracts
With Zipper or Waiver Clause

78.6% Northwest	51.7% Northeast
43.2% Midwest	62.5% South-Southwest

52.6% Nationwide

A zipper or waiver provision states that the written contract is the complete and full agreement between the parties and that neither party is obligated to negotiate on other items during the term of the contract. Of course, the parties may negotiate further if both agree. The purpose is to avoid continuing negotiations after the contract has been ratified and, when coupled with a strong board rights provision, it limits the role of past practice used by grievance arbitrators.

A good example of this type of provision is found in the contract of Mt. Lebanon School District, Pittsburgh, Pa. It states:

This agreement is the result of collective negotiations between the district and the association which have been conducted under the requirements of and directives of statute law. The provisions of this agreement may be changed only through the mutual agreements of the district and the association. All terms and conditions of employment not covered by this agreement

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shall continue to be subject to the district's direction and control and shall not be the subject of negotiations until the commencement of negotiations for a successor to this agreement.

Maintenance of Benefits/Standards

Percent of Contracts
With Maintenance of Standards

21.4% Northwest	17.2% Northeast
4.5% Midwest	12.5% South-Southwest

11.6% Nationwide

Avoid this type of provision, period! More than any single area, including economics, this is a management priority to keep out of the contract. Routinely included in most union demands, the clause, if accepted, incorporates the district practices on a wide range of items, many of which are not mandatory subjects of bargaining. It is the antithesis of a board rights and zipper provision. Fortunately for school management, few agreements returned with the **Critical Issues Survey** contained this clause.

One such clause from a district in a Northwestern state says:

All conditions of employment, including teaching hours, extra compensation for work outside regular teaching hours, relief periods, leaves and general working conditions shall be maintained at not less than the highest minimum standards, provided that such conditions shall be improved for the benefit of teachers, as required by the express provisions of this agreement. The agreement shall not be interpreted or applied to deprive teachers of professional advantages heretofore enjoyed, unless expressly stated herein.

Clearly, this district is in for serious problems. What is a "professional advantage"? Does it include the number of students? Interestingly, the same exact language turns up in contracts from other parts of the country.

Conclusion: The five areas discussed above are the most significant for a district in retaining its ability to manage its schools. A district with provisions covering board rights, zipper or waiver, a narrow grievance definition, no strike, and without a maintenance of standards clause, is well on its way to dealing positively with the challenges of labor relations.

Note: Districts should also avoid any incorporation clauses. These are clauses which would incorporate other documents (e.g., statutes, policies, constitutions) into the bargained agreement. However, resources did not allow an examination of this issue in detail.

Other Areas

The rest of this chapter describes some specific areas of negotiations which are more dependent on specific state statute than anything else. Even if the area(s) must be negotiated, there are appropriate management goals. The four substantive areas include an example of a less restrictive and a more restrictive provision. For the procedural area of binding grievance arbitration, only the data are presented.

Grievance Arbitration

Percent of Contracts
With Binding Grievance Arbitration

71.4% Northwest	86.2% Northeast
63.6% Midwest	47.6% South-Southwest

69.5% Nationwide

Most school management negotiators agree that binding grievance arbitration is not a problem if the rest of the contract protects vital board rights. Grievance arbitration is a substitute for court enforcement of the written contract. It is quicker and cheaper than the courts.

Teacher Evaluation

Percent of Contracts
With Grievable Teacher Evaluation

71.4% Northwest	58.6% Northeast
56.8% Midwest	62.5% South-Southwest

60% Nationwide

The Greater Albany (Oreg.) Public School District #85 provides a teacher evaluation clause which is not entirely subject to grievance procedure; therefore, not overly restrictive to the district. It reads:

The primary purpose of evaluations shall be improvement of instruction. However, it is recognized that such evaluations may also be used as a basis for determining employment status.

Teachers shall be evaluated in accordance with the form provided by the State Board of Education. However, the district may, prior to the beginning of any school year, adopt supplementary evaluation forms.

Failure to follow the procedures listed below is a grievable matter which may be processed up to and including arbitration, but the substance of the evaluation is not grievable or arbitrable:

1. Permanent teachers shall be evaluated at least once annually.

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2. Probationary teachers shall be evaluated at least twice annually by March 1.

3. Prior to November 1, teachers may request a conference with a building administrator in order to be better informed of the district's expectations or to make any inquiry about evaluations.

4. If the basis for an unsatisfactory evaluation is classroom performance, a minimum of one class period or major portion of the class or activity must be openly observed.

5. Persons making the evaluations shall hold teaching certificates.

6. The evaluation shall be signed by the person supervising the teacher and by the teacher.

7. A copy of the annual evaluation report shall be given to the teacher. The annual evaluation report shall be maintained in the personnel files of the district, after notification to the teacher.

8. A teacher may make a written statement relating to any evaluation and such statement shall be placed in his/her personnel file.

Note that the substance of the evaluation is not arbitrable, only the process is.

Class Size

Percent of Contracts
With Specific Class Size Clause

28.6% Northwest	17.2% Northeast
9.1% Midwest	16.5% South-Southwest

14.7% Nationwide

These percentages double if any reference to class size is included. We excluded general references to class size such as this one found in the Southern Gloucester County Regional High School District, Franklinville, N.J. It reads:

It is recognized by the board that pupil-teacher ratio is an important aspect of an effective educational program. The board agrees to continue its effort to keep class sizes at an acceptable number as dictated by the financial condition of the district, the building facilities available, and availability of qualified teachers and the best interests of the district as deemed administratively feasible.

Such a clause would not seem to restrict the board at this time. Of course, from the union perspective, it is a start.

An example of a very restrictive clause is found in a district in a Northeast state. It says:

1. The following constitute what are reasonable class sizes for all schools:

Elementary schools:
Primary grade levels, including kindergarten — 25 students.
Intermediate grade levels — 28 students.
Middle schools:
Academic classes — 28 students.
Related arts and other nonacademic classes — 34 students (except for performing groups).
Physical education classes — 40 students.
High schools:
Academic classes — 30 students.
Nonacademic classes — 34 students (except for performing groups).
Physical education classes — 43 students.

2. Classes in an individual school may range between plus or minus six of the applicable reasonable class size figure, except that this provision shall not necessarily apply to every single class within the school. Integration of special education students into related arts and physical education classes at an individual elementary school(s) could cause these ranges to be exceeded at that elementary school(s), in accordance with the procedures that were utilized by the board in this regard during previous agreements.

3. Class sizes in an individual school shall not average in excess of five more than the applicable reasonable class size figure.

4. The actual average class sizes, on a school systemwide basis (not on an individualized school basis), for each of the eight total class size categories indicated in Section 1 (not separate subject areas, grade levels, etc.,within those eight class size categories) shall not exceed two more than the applicable reasonable class size figures provided under Section 1.

5. Class sizes in vocational education, industrial arts, business education and home economics shall continue not to exceed the number of stations available in the assigned classroom area. The number of stations in such classrooms shall continue to be maintained at levels consistent with the school systemwide established standards and practices in effect during the 1977-78 school year. The provisions of this section do not require any changes in procedures and practices that were utilized in assigning students to such classrooms during the 1977-78 school

Quick Tips on Contract Language

- ✔ Do adopt a management philosophy for all items.
- ✔ Do negotiate a strong management rights clause.
- ✔ Do negotiate a no strike provision, even if state law makes strikes illegal.
- ✔ Do negotiate a zipper or waiver clause which locks up the contract during its term.
- ✔ Do negotiate a narrow definition of a grievance. This limits grievances to the specific terms of the written agreement.
- ✔ Avoid any maintenance of standards clause.
- ✔ Avoid union "veto" provisions which limit management's ability to act.
- ✔ Avoid terms such as "professional advantage," unless they are clearly defined.
- ✔ Avoid unnecessary ambiguities.

year, but do require at least the continuation of these procedures and practices.

6. Class sizes for various special education classes are covered under Article 9, Special Education, section 9, subsection b.

7. Within each individual school, class sizes for various grade levels, departments and subject areas shall continue to be balanced reasonably, in accordance with practices followed during the term of the 1976-78 agreement.

8. The definitions and procedures for calculating and reporting both actual class sizes and average class sizes, both on an individual school basis and on a school systemwide basis, that were utilized during previous agreements, shall be continued during the term of this agreement.

9. Information on actual class sizes and on average class sizes will be compiled annually by the board prior to November 1 of each school year and will be made fully available to the union at that time.

Reduction in Force (RIF)

Percent of Contracts With RIF Procedure			
50%	Northwest	62.1%	Northeast
45.5%	Midwest	62.5%	South-Southwest
	55.8% Nationwide		

The overwhelming number of these agreements with the RIF procedure use seniority within a certificated field as the key factor for layoff and recall. These are often very restrictive, such as the following from a district in a Northwest state:

The term "RIF" as used herein refers to action by the board reducing the number of teachers in the district due to economic reasons only; it does not refer to decisions to discharge or nonrenew an individual teacher for cause.

Teachers with valid contracts will not be laid off during any school year. In the event of layoff, the board shall provide written notice to all affected teachers on or before May 15 of the school year preceding the year in which layoff would occur.

Layoff shall be by seniority only as modified by the provisions of this section as hereafter established. Seniority is defined as length of service within the district as of the teacher's first working day; providing that any teacher employed by the board shall be granted full seniority credit for each year or portion thereof for teaching experience from any district in the state.

Less than full year teaching experience shall be computed as the actual number of days employed by a district as a full-time teacher excluding any substitute service. A seniority list ranking each teacher from greatest to least seniority shall be provided the association by March 1.

In the event of more than one individual teacher having the same seniority ranking, all teachers who are affected will be ranked in accordance with the total seniority as employees in the district from greatest to least.

In the event of more than one individual teacher having the same number of credits after applying the above provisions, all teachers so affected shall participate in a drawing, by lot, to determine position on the seniority list. The association and all teachers so affected shall be notified in writing of the date, place and time of drawing. The drawing shall be conducted openly and at a time and place which will allow affected teachers and the association to be in attendance.

RIF Procedure. In the event it becomes necessary to lay off teachers, the following procedure will be implemented:

The staff requirements and projected student enrollment for all schools in the district will be listed by building.

Staff selection to fill all staffing requirements will be made from the seniority list in descending order from highest to lowest position; provided, that where teaching assignments require special certification by state regulations, such assignments shall be filled with teachers currently holding such special certificates.

Teachers currently assigned in full-time teaching positions shall be first assigned to all full-time teaching positions consistent with their individual seniority and shall not be obligated to any part-time teaching position but may choose to accept such a position on a voluntary basis.

Teachers currently assigned in part-time teaching positions shall be assigned to part-time teaching positions only consistent with their individual seniority provided no part-time teacher with less seniority shall be assigned to any part-time teaching position unless such a position is declined by all teachers (full- and part-time) with greater seniority.

Individual teachers not slotted into a teaching position will be notified of layoff in accordance with the aforementioned provisions of the article, and will be recalled as requirements permit.

Teachers on layoff shall be placed in a rehiring pool and ranked by seniority therein. It is understood and agreed that although teachers properly laid off pursuant to the terms hereof and in compliance with applicable law may not have a continuing contract guaranteeing them a teaching position and a salary for the forthcoming fiscal year, each laid off teacher shall be considered as to have employment status with the district for purposes of seniority, insurance and other fringe benefits as provided herein. A laid off teacher shall be considered to have employment status with the district until he/she submits a written resignation.

A minority of the clauses stress other factors, including the district's affirmative action plan and the "merit" of teachers. An example of the latter is found in the contract of the Unified School District 410 in Hillsboro, Kan. Its contract states:

During periods of enrollment decrease, preference will be given to filling vacancies by transfer or reassignment, if this can be accomplished without weakening the educational program.

Seniority will be a deciding factor in staff reduction when the quality of teaching of all teachers in the grade or area is satisfactory. The ineffective or incompetent teacher, however, will be first choice for reduction; such incompetence would supercede seniority as a determining factor. Competence shall be defined on the basis of two of the last three evaluations. The two chosen shall be by mutual agreement of teacher and board. If needed, strengths of the third evaluation may be considered.

School Calendar

Percent of Contracts With Specific School Calendar			
42.9%	Northwest	10.3%	Northeast
20.4%	Midwest	0%	South-Southwest
	18.9% Nationwide		

As with the issue of class size, the percentages more than double if any contractual reference to the school calendar is included. However, general references to the number of school days were excluded because they do not limit the ability of the board to schedule the year according to community needs and other factors such as weather. This means that clauses such as the following from the Pocono Mountain School District, Swiftwater, Pa., were excluded from our tally. It reads:

The school calendar shall consist of 180 instructional days for pupils, plus four days for inservice training and four "snow days." Those "snow days" which are unused will be deducted from the last days of the calendar. The board will determine, in accordance with the law, the dates between which the schools of the district will be open.

The other extreme for the calendar is represented by a district in the Northeast in which the union has veto over all aspects of the calendar. The board has no flexibility except as given by the association. The provision reads:

The school calendar of the school district for the school year 1978-79 shall be distributed to teachers upon agreement of the association and the board.

There shall be no deviation from or change in said school calendar except by mutual agreement in writing of the association and the board. The calendar for the school years 1979-80 and 1980-81 will be distributed to teachers upon agreement of the association and school district.

Pupils shall be dismissed after two hours on the last day of school. Teachers shall be required to remain in school on such day until the completion of their regular morning session.

Newly hired teachers may be required to report for orientation on the Friday preceding the start of the school year.

Summary

Contract language is but one of the critical issues facing school labor relations today. While it is not possible to project findings for this chapter to the over 8,500 written teacher contracts, a few trends are identifiable. The extent of management provisions in the agreements is encouraging. For example, the fact that only 11.6 percent of the sample contracts contained a maintenance of standards clause is a positive tribute to school officials everywhere, as is the overwhelming adoption of narrow definition of a grievance.

There are clear signs, however, of difficulties ahead. Why do only 52.6 percent of the agreements have "zipper" clauses?

This chapter is intended to give administrators some ideas for improving the written contract in their districts. As with most areas of school governance, careful advance preparation is the key to successful strategies.

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Chapter IV

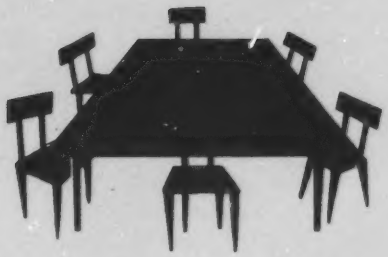

Table Strategies

Techniques that are appropriate in bargaining vary from district to district. In addition, techniques that are suitable at one time may be inappropriate later.

The best approach for negotiators is to learn a repertoire of techniques and to select those most appropriate in meeting district objectives. A problem for new negotiators is that they must learn to use the techniques "naturally" — without having to take time to figure out which technique is most appropriate for use at a given time.

The tactics chosen are influenced by the negotiating philosophy that guides the district. Experts advise districts to follow a middle course that is neither naive nor unnecessarily hard-nosed.

A naive approach is one that says "we'll put all our cards on the table and expect the union to do the same." Some give-and-take is expected. If agreement is reached at the first negotiations meeting, employees probably will think their representatives have not asked for enough.

On the other hand, some boards try to compensate for past errors by taking the position that employees deserve nothing until management regains its losses. Such an approach can be shortsighted and disruptive. A contract that gives employees little in return for their concessions could result in low morale during the term of the contract and heightened tensions during the next round of negotiations. The employee negotiators may be replaced or they may return seeking vengeance.

What is the middle ground? Being firm but fair, according to AASA legal advisor Fred Lifton of Chicago. "You earn respect," Lifton noted, "not by concession-making, but by the rationality of your position — even though the other side may strongly disagree with you."

"You need to be sincerely interested in employee needs," added Anthony Rago, superintendent in Mars, Pa. "You must recognize that employees have financial problems because of inflation. But if you're not careful," he cautioned, "they will take the shoes off your feet."

Both Rago and Lifton emphasized the importance of being honest and ethical in negotiations with employees. To Rago, this means leveling with employees about the advantages management would gain with a certain proposal. Negotiations that are not bargained in good faith "can leave a bad taste" with employees, Rago noted.

Equitable and sensible collective bargaining is characterized by an attempt to solve problems realistically, said James Moran, executive director of the New Jersey Association of School Administrators. Although negotiations sometimes call for "theatrics," such tactics should not be used unless they are "extremely productive" in moving negotiations toward the "reality" of what both sides will accept, he said. "I think shoe-thumpers cause a great deal of trouble."

Districts can promote a constructive atmosphere during negotiations in these ways:

- Treat the employee team with respect. Begin the first meeting with both negotiators introducing themselves and the other team members.
- Be punctual and avoid canceling bargaining sessions. Otherwise management may be charged with failing to negotiate in good faith.
- Meet with the union team on a regular basis. Districts should not fall into the trap of meeting too frequently, but refusing to meet at all indicates intransigence.
- Discuss the issues, not personalities.
- Back up a "no" with a reason.
- Offer counterproposals and make some concessions to a reasonable number of employee demands.
- Present management proposals in ways that can

help the union sell them to its membership.

- Allow the other side to save face. "Cheap shots" may give the team a momentary psychological advantage, but they damage the trust and rapport necessary to reach agreement.

Caution: A strike may be unavoidable. The district may not be able to afford the kind of increase employees want. Also, some strikes are politically motivated by influences beyond the local school district.

Even if a strike seems inevitable, management's team should be guided by fairness. Employees want their union and management to coexist peacefully. A hostile tone at the outset by management's negotiator may result in bitter tensions.

Team Assignments

Someone completely new to collective bargaining probably should not be on the team, said James Moran, a highly respected negotiator with experience first on the union and now management's side of the table.

Staff members new to the team should have well defined roles, Moran added. For example, a new team member might be assigned to write articles on the progress of negotiations for a staff newsletter. Another team member is usually assigned to take notes during negotiations, although some chief negotiators prefer to keep their own notes. Having a team member take notes, however, frees the chief negotiator to watch the other side for nonverbal cues.

Official note-taking should be the repsonsibility of a single person to ensure that this important function is not overlooked. *Negotiations '79*, a publication of the New Jersey School Boards Association, offers these additional suggestions:

- The person charged with note-taking should have legible hand-writing and be able to record events precisely. The note-taker must not get so engrossed in the discussion that he or she forgets to record what happens.
- Review notes from previous years before bargaining begins. Review notes from the previous session in preparing for the next session.

There is no one accepted form for note-taking.

Ground Rules for Negotiators

Experienced negotiators consulted for this report recommend the following tips and cautions regarding bargaining:

- Don't agree to a total press blackout. If impasse is reached, management will want to take the district case to the public.
- Don't agree to joint submission of proposals. There is no reason for management to submit its proposals before having a chance to see the number and kind of union proposals. "The duty to bargain arises upon request," noted Tom White, labor relations specialist for the Oregon School Boards Association. He tells unions, "If you don't have anything to bargain about, we'll all go home."
- Do prohibit recording devices. Tape recorders inhibit the free flow of information, said Fred Lifton. They also encourage grandstanding because both sides are speaking "for the record." They can inhibit compromise because a union will have difficulty agreeing to something less than its public stance. The issue of recording devices is moot in a sunshine state, Lifton added, because neither side has control over any recording done by a member of the audience.
- Do stipulate that the union must submit a complete package at the first meeting. Conversely, the union has the right to require management to submit its entire proposal at a single meeting. This does not preclude either side from raising new issues in the spirit of compromise as negotiations proceed, Lifton said. The key is compromise. New proposals must not represent "an escalation."
- Don't agree that all settlements will be retroactive. "That is something to be negotiated," Moran advised.
- Do request that the union give the management team copies of press releases at the same time they are given to the press.

Tips for the Table

- Try not to accept any contract language that requires an oral explanation of what it means, said one board member. The placement of punctuation marks is sometimes pivotal.
- Before management prepares a response to the union's initial offer, it should be analyzed by many persons, including the negotiations team, the superintendent, the district business manager, the personnel manager, one or more principals and board members.
- Always give the other side something that can be labeled a victory so the team can sell the contract to the employees.
- When in doubt about a contract item, don't agree to it. Expensive mistakes are made when negotiators agree to things hastily. The negotiator can always call a caucus to get team members' reactions. At times, consulting the school board before replying is necessary.
- Don't bluff. Don't make a threat unless ready to carry it out. Don't agree to something unless the board will agree. At best, the negotiator loses credibility. At worst, a provision that is damaging to management may become permanent.
- Don't let the union agree to language unwittingly that can cause it embarrassment later. The momentary psychological advantage will be more than offset by hard feelings in the schools and at the next round of negotiating.
- Avoid loose, vague or flowery language. It may be interpreted to mean more than management intended.
- Don't refer to an employee group of nonteachers as "non-professional" employees. A better choice of words is classified or non-certificated.
- Don't try to specify who will represent the union. Some districts will refuse to negotiate with a representative from the state or national union. In many states, this refusal is an unfair labor practice. It is also poor psychology.
- Beware of the "no confidence vote." Some unions convince employees to vote "no confidence" in the superintendent in an effort to weaken management's negotiating effort. Superintendents should warn board members in advance so they will attach less importance to a vote if one arises.
- Beware of the "parent front" group. Employees may try to mobilize sympathetic parents to lobby the superintendent and school board. When faced with a community group, management should carefully determine whether the group is a cross section of the community or relatives of union members.
- Board members should not talk to employees or others about negotiations. Casual remarks by a single board member are often taken to represent positions of the entire board.
- Negotiators must keep their sense of humor. They should be able to laugh at themselves publicly. Laughter is a good tactic for breaking tension and for keeping the sessions low-key.
- Don't refer to other groups of employees in a contract. Reduction in force clauses, for example, sometimes say aides, secretaries and others will be laid off ahead of teachers.
- Avoid philosophical statements that are not fact-related or operationally defined. Philosophical statements may be too broad or too narrow and may actually restrict management's ability to operate.
- Be cautious about the use of certain phrases, cautions the Montana School Boards Association in its labor relations handbook. Care is advised in using phrases such as: "every effort," "in no case," "if possible," "under no circumstances," "never" and other absolute terms; "shall be entitled to" (instead of "shall be permitted to") "including, but not limited to"; and "meet and confer" (unless defined otherwise, this phrase can give the union veto power over the matter being discussed).
- Distinguish between individual teachers and the union as a whole. Keeping a mental distinction between teachers and the union will help administrators heal the wounds after a strike ends.

Notes are easier to review, however, if the writer is consistent from session to session. Bargaining experts stress this tip: Keep notes confidential.

One other tip: Before a grievance is answered at the superintendent, board or arbitration level, review the notes on the contract section(s) in question, the New Jersey School Boards Association suggests. In cases where contract language is not clear, arbitrators will often accept negotiations notes as evidence indicating the intent of the agreed-upon language.

Ground Rules

As negotiators gain experience, they see less need for formal ground rules. At worst, agreement on detailed ground rules can amount to negotiating a "mini-contract," Fred Lifton said in an interview for this report. Such attention to detail wastes time and is ineffective because agreements on ground rules are essentially unenforceable, he noted.

On the other hand, the two teams need to discuss basic arrangements such as where to meet and how often to meet. These matters are usually discussed before or during the first meeting.

Location: Some negotiations experts cite the psychological advantage of meeting "on the board's turf" and the practical advantage of being close to administrators in the administrative building. Lifton, who negotiates for many school districts in four states, believes the location is inconsequential as long as certain amenities are present. The negotiating facility should have: access to caucus rooms, typewriters, telephones, photocopying equipment, reasonably comfortable chairs and coffee. One prerequisite for the future: computers. Motels are unsatisfactory, Lifton noted, primarily because of cost and limited access to the above equipment.

Should negotiators meet on school time? "Districts negotiate both during and after school," Baltimore labor commissioner Jeff Austin said. "What is best is what works."

Other decisions to be made at the first meeting:

- Length and frequency of meetings. Both should be limited initially, experts recommend, because no purpose is served by long and frequent meetings until there is some momentum toward settlement or a sense of urgency generated by the calendar (e.g., school is about to start).
- Whether consultants will be permitted.
- Whether observers will be permitted.
- How agendas will be set for the following session.

Bargaining Principles

The bargaining process has four stages (assuming impasse does not occur):

- The union presents its proposal.
- Management presents its counterproposal.
- Discussion or rhetoric stage.
- Closure. Both sides make some of their largest concessions in order to reach agreement.

Experts interviewed for this report suggested many bargaining principles that apply at one or more of these stages:

Union Proposal

The union proposal is presented one of two ways: either the union hands over the written proposal at the first meeting and explains its rationale at the second, or the presentation and rationale are given at the first meeting.

Principle No. 1. Use an inquiry approach when exploring union proposals. James Moran approaches collective bargaining as problem solving. He asks the union to explain what problem is being solved by each of its proposals. Asking many questions and listening carefully gives clues to union priorities, that is, which union proposals are throwaways and which would be considered the basis for a strike.

Note: The management team should not react to the proposals at the first meeting. Instead, it should wait until team members have had an opportunity to examine all the ramifications.

Principle No. 2: Seek agreement on the financial data. "I insist on an interval between the union proposal and the first negotiating session when both sides get together to cost out all economic proposals," Morgan said. "I never begin negotiations without agreement on the data." To Moran, this means that both sides must agree on the cost of a one percent or other percent increase in the salary and fringe benefit package.

"Many settlements have deteriorated at the end of negotiations," Moran said, "because the parties are dealing with two sets of data."

"What if the district is laying off teachers?" Moran was asked. "Won't the union object that the district will have more money to spend?" Moran suggested this response to the union: "You certainly wouldn't give us credit in the budget if we were hiring new teachers. You never did."

"In negotiations," Moran concluded, "you're always looking for a counterpoint."

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A Guide to Nonverbal Table Language

Astute negotiators pick up many clues from the body language of the other negotiator and members of the opposing team. Similarly, what is not said can be as important as what is said. The union, for example, may stop asking for binding arbitration and refer simply to arbitration. This shift may signal willingness to settle for advisory arbitration.

Team members must be aware of the body language they are sending to the other side. To illustrate: a negotiator or team may send an intentional message, such as feigning boredom, when the union negotiator is lambasting the management bargaining team.

Below are some nonverbal cues and what they usually signify:

- Crossed arms signal rejection.
- Overt hostility may be communicated by facial expressions, eye contact, use of hands.
- When the union negotiator is speaking, watch the other team members. The negotiator may speak with passion, but if the team members appear uninterested, the issue is likely to carry low priority.
- How often does the other side call for a caucus? Frequent breaks could indicate the other side is disorganized. Either team members are "fighting a battle among themselves over your proposal," or one of the team members may be a novice who does not understand the proposal, Grogan noted. Who calls the caucus? If it is a belligerent person, he or she may be fighting things all the way, said John Grogan, assistant superintendent, Waynesboro, Pa.
- If it is unclear whether a union demand has been dropped, negotiators advise not always asking about it. Instead, the management team should listen closely to the union negotiator for any reference to the item. If it is not mentioned at all, one idea is to corner the union negotiator outside the session and ask whether the item has been dropped. If so, the management negotiator need never bring it up again. If, on the other hand, the item has been dropped by mistake, the union negotiator will appreciate the reminder. Another idea is to suggest that all remaining items be listed in a summary.

Counterproposal

At the second or third meeting, the board submits its counterproposal. A district should never exchange proposals with the union, warns Chicago attorney Fred Lifton. "In many districts, the board may be euchred into an exchange of proposals. This is dangerous to the bargaining process; dangerous for the board."

Some negotiators submit their proposals in the form of a finished contract, with signature lines and salary schedules. Another approach is to present an outline of the contract, listing, for example, "Article I, no change," "Article II (with changes spelled out)." Others will renumber the union proposals, deliberately scrambling the order. Still others bring a "book" of proposals that is used in negotiations with all employee groups.

Principle No. 3: Gain the initiative by working from management's proposal. By presenting a completed contract, management can make wholesale deletions of union demands. To the contrary, working from the union proposal legitimizes outlandish demands, said James Moran. Why? Because such an approach assumes that the demands have some "reality" when, in fact, the benefits never existed, he said. "I don't go back to the union proposal except for isolated cases. If it raises a question I haven't addressed, I deal with that particular item." This technique also effectively identifies which issues the union considers important.

Discussion or Rhetoric

The bulk of the negotiating time will be spent in determining which proposals each side will drop and which each will accept or modify.

Principle No. 4: Use Quid Pro Quo. In other

words, get something for something. The idea, too, is to find some items to give. New negotiators are warned that the idea is not to make one-for-one trades. Lifton states the point this way: "The unsophisticated negotiator on either side may say, 'we gave something; now it's your turn.' It's a very dangerous philosophy to feel you can trade one-for-one on negotiating issues," Lifton said. "You try to get rid of 75 percent of the union's proposals without giving up anything." Another caution: There are some items, e.g., class size, on which no trade is possible.

Principle No. 5: Try to agree on some things early to build rapport and momentum. Negotiators will often agree to a few unimportant items early in negotiations to build rapport. "If you have something small to give, the time to give it may be early — to set the right climate for negotiations," Lifton said. In some cases, management may want to hold onto an item the union wants for a period of time. Knowing what to trade and when to trade it are part of the art of negotiating.

"One of the major difficulties for negotiators, psychologically, is having to say 'no' so often," Lifton noted. "Sometimes," he said, "the union will give you some 'easy' issues. When you spot them, you pick them up and agree to them."

Principle No. 6: Trade insignificant for significant items. Often the question here boils down to timing. What is the right time to make a trade? Consider: Something of little consequence to the school board — such as dues checkoff — may be important to the union. To get maximum advantage from concessions, the board may not want to agree to the checkoff early in negotiations. Instead, it may want to wait and tie the provision to something it considers important.

Principle No. 7: Deal in packages. By packaging proposals, the district may cause the union to drop, say, eight demands in exchange for five concessions.

The packaging concept in bargaining is very important, but very difficult, according to Lifton. "It is one of the most effective ways to persuade the union to drop a number of demands. It's not politically feasible for the union to concede at the table that a number of items will be dropped, but packaging gives the union representatives a chance to save face." Generally, Lifton advises, packaging should not be attempted until "quite late" in the negotiations.

Priniciple No. 8: Negotiate economic items last. This is usually what the union wants to do, too, so both sides will try to dispose of other items first.

Priniciple No. 9: Require the union to justify each proposal locally. The question to ask the union team is this: "Why is this item needed in this district at this time?" Persistent questioning along that line may reveal that the union does not have a good reason for making an unreasonable proposal.

Principle No. 10: Bargain concepts before language. It is easier to agree on an idea than on exact language. James Moran attempts to discuss an idea in general and then to submit specific language. If the union objects to the language, he asks: "Am I not stating the concept correctly?" Here's an example of how a district might apply this principle: The union wants the right to meet. Management would agree that union members should have the right to meet on school property, but it would insist on certain stipulations, such as meetings could not be held during class time.

Principle No. 11: Reduce provisions to writing as agreement is reached. When both sides agree on an item, the provision should be spelled out and initialed "T.A." or tentatively agreed-upon. Negotiators must be careful not to T.A. something, however, until all items in the package have been resolved.

Caution: Tentative agreements must not be entered into lightly. Reopening negotiations after tentative agreement is a sign of bad-faith bargaining, Lifton warns, unless it occurs over another item that arises later in negotiations.

Principle No. 12: Use the "pass-over" technique to keep negotiations moving. When the two sides cannot agree on an item, deferring it may prevent the entire process from bogging down. The item may be dealt with later in a package or away from the table. Single issue impasses are usually broken in the final stages through packages. Management may also wish to "pass over" a noncontroversial item to save it for a package.

Principle No. 13: Be conciliatory when management cannot agree to a proposal. Good faith bargaining requires negotiators to demonstrate a genuine interest in reaching agreement: (1) by giving reasons for a position and (2) by offering counterproposals when compromise is possible. A conciliatory stance helps keep the focus on problem solving and away from rhetoric and personalities.

"I try to point out to the other side," Moran said, "that management can't agree to language that

points a loaded gun at its head." Moran tells the other team that he knows those at the table would not abuse the contract and that the union as a whole probably would not abuse it. "But they must know that one person in their group probably would abuse it.

"If the union will agree to language that will protect the district from that one person, then we're willing to write the language," Moran concluded.

Principle No. 14: Do not place a clause in the contract simply because management agrees with it. "A labor contract need not and should not contain the entire district policy manual," school board member David Whitmore told a session at a National School Boards Association convention.

Q & A on Sharing Information, Arbitration

Q. How open should the board team be with financial and other bargaining information?
A. That depends on the board's bargaining position, James Moran said. If the district comes to the table indicating it cannot pay what it would like, it should share any proof it has with the other team. "You have to be open, above board and forthright," Moran advised. If the board is willing to meet the going rate on salaries and benefits, it is not necessary to share financial information. "It becomes no one's business what your base is," Moran said.

Q. How many counterproposals should a board negotiator prepare?
A. "I never think in terms of counterproposals," Moran said. Instead, he approaches bargaining with one proposal for the whole contract. There are no rules of thumb, no mechanical formulas, according to Moran and Fred Lifton. "You have to have counterproposals in your head," Lifton noted. "You can't approach the issue mechanically. Where you move and how you move depend on a variety of things."

Q. What about binding arbitration?
A. Lifton and most management negotiators are opposed to binding interest arbitration.

Its presence, they say, distorts the collective bargaining process. Why? Even the thought of a potential arbitrator makes both teams bargain in a different manner. "They are looking over their shoulders at that potential arbitrator," Lifton said. Consequently, neither side is as willing to make concessions, and impasse and binding arbitration become much more likely.

Lifton, who has bargained in Iowa under the specter of binding arbitration, advises districts to keep arbitration out of state law and out of the contract. Boards often cave in on language items to avoid arbitration, he noted. This fear is not unwarranted. The "natural tendency" among arbitrators is to trade language for many items because they are "much more sentitive to economics," the Chicago lawyer said.

Negotiators must get a "more careful reading early in the process of how far the board is willing to go," Lifton said. This more complete information can help the negotiator retain maneuverability if negotiations proceed to arbitration.

Caution: Getting to the bottom line early is difficult because the board does not know the importance of each issue to employees. Also, in the absence of the pressure that inevitably builds later in negotiations, boards tend to commit themselves to unrealistic positions. "People who take the hardest position in April or May are usually the first to cave in in August or September," Lifton said. Boards that have endured a strike or near-strike in the past are more likely to take realistic positions, he added.

Finally, this advice: Management must bring its own demands to the table when binding interest arbitration is a possibility. Although negotiators caution that management should not bring demands if the contract is "clean," it is important to have some trading leverage in an arbitration, said Frank Forbes of the National School Labor Relations Service.

Priniciple No. 15: When teams are large, consider delegating complex items to subcommittees. One use of a subcommittee could be to put together an extracurricular or stipend schedule.

Here's another example: The Denver Public Schools and the teachers organization each bring nine-member teams to the table. The two negotiators will sometimes assign a contract provision to a four-person committee containing two persons from each side. The committee is co-chaired by a teacher and an administrator. The subcommittees meet outside of regular negotiating sessions and operate within strict guidelines set by the two chiefs, said Darold Bobier, district staff relations specialist. A committee assigned to draft the health insurance package, for example, might be instructed not to negotiate above a certain dollar amount and to include family coverage.

Subcommittees will not always come up with final language, but they can close the gap, Bobier noted. The committee is "a good time-saver" and also provides an opportunity for meaningful involvement of team members in the negotiating process. Other advantages: Subcommittees divide the workload and provide an opportunity to use identified "experts" from the two teams.

A caveat: Subcommittees should be given a well defined, limited scope of work. Otherwise, a district may find it has another negotiation (by the subcommittee) going on in addition to the main negotiating effort.

Principle No. 16: Use timing to advantage. There are two elements in timing: the scheduling of bargaining sessions and the timing of responses to union proposals.

Scheduling: How frequently should bargaining sessions be scheduled? Lifton's rule of thumb is about once every two or three weeks, except at the end of bargaining.

If no progress is being made — and no deadlines are imminent — schedule "big blocks" of time between sessions, Moran advised. "Crises — real or imagined — bring settlement." He identified three crisis points: (1) the end of school (teachers don't like to leave without knowing what their salary will be for the following year), (2) the beginning of school and (3) fiscal deadlines, such as the date by which the county certifies the mill levy.

If bargaining continues into the summer months, recess until August, Moran suggested. Why? No progress will be made in June or July, and frequent meetings are likely to cause both sides to harden their positions. "People will take a stronger stand on why they need something, and ultimately settlement is accomplished by diminishing expectations," Moran explained.

Responses: There are no set rules on when to say "yes" and when to say "no." Timing is a skill gained through experience. Good timing requires waiting for the proper psychological moment to advance a proposal or make a concession. Three cautions apply:

- Don't move too quickly. The effect is to increase expectations, rather than to decrease them, Lifton said.
- Don't advance a final offer too soon. The union team must be convinced that the offer is the best it can get.
- Make sure the negotiator has authority from the board to reach agreement. A negotiator lacking such authority will be unable to seize unexpected opportunities to settle.

Principle No. 17: Use the unequivocal "no" judiciously. Saying "no" can undermine a negotiator's credibility two ways. If the negotiator gives a flat "no" early in negotiations and ultimately compro-

Rules and Guidelines Are Great, But . . .

The bargaining process is pragmatic.

For that reason, negotiators should be wary of subscribing to a set of "rules" when it comes to collective bargaining.

A strategy should not be judged by whether it agrees with the experts, but rather, "does it work?"

"I have changed my mind on a number of things since starting out about what ought to work and what actually works," said Fred Lifton, an experienced negotiator and AASA's legal adviser. "A district may do something everyone else says is wrong. If it works for them, fine. Don't change it. That's stupid."

By the same token, a negotiator or team should not be wedded to a proposal or strategy when circumstances or reason indicate a change is warranted.

In bargaining, flexibility is extremely important.

mises on the issue as the school board weakens under pressure, the union team will have less confidence in the management negotiator's word. The safer course is to send a message that implies "no, not today," such as: "I can't imagine a circumstance where the board could agree to that." By the same token, a negotiator should not imply flexibility when it is clear the board will never give in on a certain demand.

Principle No. 18: Use side-bar bargaining if it will advance discussion. Chief negotiators can be more candid with each other when they are not speaking in front of their teams. Such side conversations are not successful, however, unless they are grounded in trust in the other person.

As negotiating parties gain experience bargaining with each other, they gain confidence in each other and the process becomes more informal, Fred Lifton said. As this happens, the negotiators frequently do more bargaining away from the table than at the table. "If I know the other negotiator very well," he explained, "the conversation can be very blunt quite early as to where we are going and how we might get the contract settled."

Note: If team members have not worked with their negotiator before, they may resent sidebar conversations and suspect the worst. If impasse occurs, negotiators sometimes engage in "official side-barring" by coming together with a mediator. Because mediation calls for the cooperation of both sides, the two chief negotiators may surreptitiously request the mediator to "order" them to meet with him or her.

Principle No. 19: Don't reward people for bad behavior. When a negotiator and, more importantly, the district, have demonstrated through past behavior that employees will not profit from an impasse, such a stand carries great weight.

Note: A negotiator's reputation on other items can also benefit the district. Union negotiators who have dealt with Lifton, for example, know they will not win a maintenance of standards clause.

Principle No. 20: Don't overlook opportunities for compromise. If a strike threatens, Moran said, and there are things the board can and should offer, these concessions should be privately communicated to the union leaders before the strike vote. "You don't necessarily put the concessions on the table," Moran said. By letting the union know what the concessions will be, however, the result can be this: The union will put its final offer on the table with the knowledge that management will accept the offer.

Boards err seriously if they take a hard stand on an issue and then cave in three to four days into a strike. "The only thing accomplished," Moran noted, "is to tell people, 'if you strike, you'll get more.'"

Bargaining Techniques

Techniques to present proposals and elicit information are essentially interchangeable between labor and management negotiators. Some are more commonly used by labor, but experts say even those can occasionally be used to advantage by management negotiators.

The techniques described below are drawn from interviews with experienced management negotiators and from *Verbal Skills and Negotiation*, a training manual developed by the staff of the National Education Association in collaboration with RCH Systems, Inc., Westwood, N.J.

Initial Bargaining Statement

The union's initial position on a given item is stated in a noncontroversial opening premise. The union negotiator, for example, might introduce a RIF proposal based on seniority by saying:

> "We would all agree that teachers who have given many years of loyal service to the district should not lose their jobs as a result of discrimination."

The specific proposal would follow:

> "A reduction in force procedure based on seniority would guarantee that a teacher would not be singled out because of a philosophical difference between teacher and principal."

"Beware of confirmatory phrases," cautioned Moran. "Statements such as 'you and I both agree with . . .' require an acknowledgment from the negotiator that eventually leads him up the garden path."

Open-Ended Question

The open-ended question requires an answer whose length is at the discretion of the respondent. It should be used when the negotiator wants more information about what the other side thinks of a proposal.

Closed Question

A closed question is used to limit the area of

Eight Reasons To Call a Caucus

The team caucus is usually thought of as a place to plan strategy and share information about a proposal. Here are some additional reasons for calling a caucus:

- To orient team members. In a caucus, James Moran, executive director of the New Jersey Association of School Administrators, explains the dynamics of what is happening at the table. "When team members are confined to the role of taking notes and facing rebuke during most of the bargaining," he said, "a considerable amount of dialogue during the caucus is extremely important."
- To give the impression of difficulty. When management wants to show that the terms employees want are hard to accept, it may call a caucus.
- To break tension. If negotiations are progressing but the other team is getting angry, management may call a caucus to break the tension.
- To rejuvenate team members. During long sessions, one effective ploy is to call a caucus and let each team member freshen up. While both sides get a break from the tension, the "primed" team comes back with more energy.
- To give the other side time to think. The management team may sense that one of the employees is ready to agree to a management proposal. By calling a caucus, management creates an opportunity for the employee to lobby in favor of the proposal among union team members.
- To avoid impasse. If team members on both sides are getting angry, a 15-minute break may head off a confrontation.
- To share information. Team members can compare notes about body language and other clues to the opposing team's feelings toward a proposal. Team members also may alert the negotiator to hidden pitfalls in a union proposal.
- To plan strategy. The negotiator can bounce ideas off the team or orchestrate a team response. The negotiator, for example, may tell the business manager to expect this question: "What do you think about this proposal?" Such questions are always premeditated and rehearsed.

Note: A caucus should always be called by the chief negotiator, although a team member can pass a note to the chief requesting a caucus. This procedure ensures that a team member will not unwittingly derail the negotiator's strategy.

discussion or put the respondent in an awkward position. It usually can only be answered with a "yes" or a "no."

Here's an example of a closed question: "Are you refusing to negotiate?"

Knocking Off Balance

A related technique is to ask two rapid-fire questions designed to knock the opposition off balance.

Example: "You want a 15 percent increase in salary. Does that mean you'll work that much harder?" If the answer is "yes," the rejoinder is, "You mean you've been holding out on us?"

Paraphrasing

Putting the opposition's position in a negotiator's own words can accomplish one of three things:

- It can place the position more clearly on the record.
- It can confirm an attitude or fact.
- It can build a climate of empathy.

A "leading paraphrase," on the other hand, restates the opposition's position in such a way as to imply disagreement without actually contradicting the other negotiator. It can also cause the negotiator to reexamine a position.

An example: The union negotiator says: "We believe a 15 percent salary increase is equitable and absolutely necessary." The management negotiator paraphrases: "I see. You think it's absolutely necessary even if it means 25 teachers will have to be laid off to afford it?"

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Position Statement

Generally used midway through the negotiations, the position statement articulates a bargaining position, summarizes a proposal, citing mutual benefits wherever possible, and requests a response. This tactic has five uses, according to the NEA manual:

- Clarifies a proposal.
- Keeps negotiations on track.
- Communicates a priority.
- Overcomes delaying tactics.
- Stimulates a reaction to a counterproposal.

Forced Choice

When one side refuses to accept a proposal, negotiators will often offer two choices that are somewhat different but of relatively equal value. "Negotiations to a degree is sales," Moran said. "And forced choice is a sales techniques based on the philosophy: 'Never give a customer a choice between yes and no. Instead the choice is between yes and yes.'"

Moran will sometimes start with two proposals and broaden the options to 10, using blends of the proposals. Offering a number of alternatives yields two advantages: It causes the team to look less recalcitrant, and it gives the other side more options to explore.

Proof and Rebuttal Statements

There are two ways to refute the board's position, says the NEA manual: by offering proof or by attacking the position through suggestions that the proposal indicates unreasonableness, ignorance or incompetence. A statement offering proof will make a stronger argument. But if the issue is a subjective one, the rebuttal is the next line of defense. The manual gives this example of a rebuttal:

> The board suggest that teachers' desire for uniform pay policies for extracurricular activities is an indication of an "unprofessional" attitude. This kind of baseless charge is just one more example of the board's usual knee jerk reaction to any constructive proposal with a price tag higher than 25 cents. Furthermore, it is based on the board's admitted ignorance of the time and effort which extracurricular activities require.

Proof and rebuttal statements should be saved for the moment when they will deliver maximum psychological impact, the manual notes. When used too early, they are wasted.

The tone of proof and rebuttal statements, the manual adds, should match the board's attitude. It urges teacher negotiators to "preserve a constructive and non-inflammatory climate whenever possible."

Closing Agreement Statement

This technique can move negotiations from informal consensus to formal agreement on part or all of a proposal. The statement should contain three elements:

- An assumption that agreement has been reached.
- A summary of the agreed upon points.
- A motion for tentative or final agreement as a matter of record.

Closing statements can be used when agreement has *not* been reached, the NEA manual advises, as leverage to force "a passive or noncommittal board to make an unequivocal response which will get meaningful negotiations started."

Use of Emotion

"Theatrics," Moran said, "should be used sparingly because they are often counterproductive."

The use of emotion can be effective if the union is adamant about a position and refuses to acknowledge management's concerns. A normally calm management negotiator can effectively get the union's attention by pounding the table.

Caution: The management negotiator may feign a lost temper but should always be in control of his or her emotions.

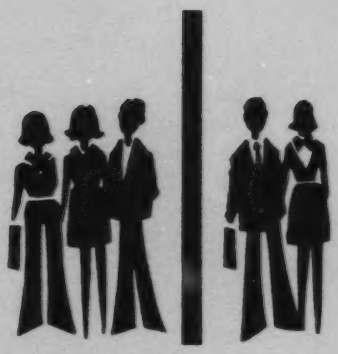
Responses to emotional attacks: Negotiators gain respect when they don't react to provocation.

One technique for avoiding the "blown fuse" is simply to sit and smile. One negotiator smiles and lets his eyes wander. Another offers this reminder: There's no rule that says someone has to be talking.

Management can expect the union to use negotiations as an opportunity to ventilate complaints. That is okay, Moran said, as long as the harangue is done with "reasonableness," and the object of the complaint is some aspect of the organization, not individuals.

Moran will not tolerate "extremely vituperative" language or physical abuse directed against one or more members of the team. "I will undoubtedly leave the room. My team is disciplined to the point that they will follow me immediately."

Chapter V



Impasse

One of the most troublesome problems in collective bargaining is the resolution of impasse. While only a few attempts to negotiate end in a strike, the number reaching impasse (a step leading up to a strike) is far higher.

Florida Bargaining Impasse, a study by the Florida School Labor Relations Service, Inc., found that 48 percent of Florida's 67 school districts reached impasse with one of its bargaining units in 1978. Some critics argue, however, that the inclusion of statutory impasse procedures — as in Florida — serves as a self-fulfilling prophecy.

Impasse is time-consuming and costly for both sides. Negotiators surveyed in the Florida study spent an average of 60 hours preparing for a typical impasse hearing involving three items.

A larger concern of school management, however, is the issue of binding interest arbitration, in which an outside party can dictate contract terms to both sides.

The range of impasse resolution techniques varies from state to state. Some state laws prescribe in detail the techniques that must be used; others leave the use of certain procedures to the discretion of the parties.

The most common dispute resolution techniques are:

- **Mediation:** This is probably the most important of the impasse techniques because it is used about 75 percent of the time that impasse occurs. An outside, neutral person works with both sides, sometimes separately and sometimes together, in an effort to reach compromise. Suggestions of the mediator are not binding, nor are they released publicly.

Mediation is particularly helpful, in the opinion of proponents, because a good mediator often can persuade parties to adopt a position they did not take prior to mediation. Logical or not, proponents say, mediation often serves as a political excuse for parties to change their position. Mediation works better when it is not mandated by a contract or a statute, that is, when both parties voluntarily agree to use it.

Generally the mediator is experienced and knows how to use the process, said Chicago lawyer Fred Lifton. He has been involved in mediation numerous times and believes it is the only impasse procedure that works. The others — fact-finding and arbitration — are artificial, time-consuming and expensive, and they distort the bargaining process, Lifton noted.

- **Fact-Finding:** If mediation fails, a neutral fact-finder may hear the case and issue recomendations. Like mediation, the recommendations of the fact-finder are advisory. Fact-finding is "very ineffective," according to Lifton. Unions dislike it, Lifton noted, because boards are not bound by the decision. Boards dislike fact-finding because it involves compromise, which may take the board further than it wants to go in a settlement.

- **Arbitration:** Interest arbitration is used to resolve disputes in the negotiation of a contract. It should not be confused with grievance arbitration, which involves interpretation of a ratified agreement. Interest arbitration decisions can be binding or advisory.

With binding arbitration, the parties agree in advance to accept the decision of the arbitrator as final. Almost every state permits school districts to engage voluntarily in binding arbitration. Seven states provide for compulsory binding arbitration to resolve school district labor disputes: Connecticut, Iowa, Maine, Nebraska, Nevada, Rhode Island and Wisconsin. Generally, compulsory arbitration is invoked if certain conditions are not met, e.g., agreement is not reached by a certain date.

State statutes on interest arbitration vary greatly. Some prescribe in detail the topics that can be carried to arbitration and the criteria the arbitrator must use in reaching a decision. Others give the parties or the arbitrator discretion on the mechanics of the process.

Three models of arbitration have emerged: conventional, final offer issue-by-issue and final offer total-package.

1. Conventional arbitration, the rule in many states, gives the arbitrator considerable discretion in determining the award. Some laws specify criteria that must be used, such as the jurisdiction's ability to pay. Other laws limit arbitration to non-wage items. But beyond those criteria, the arbitrator is free to grant either party's final position, select a position in between the two, or even award less than management offered or more than the union demanded.

2. Final offer issue-by-issue is the rule in Iowa. The arbitrator must choose among three alternatives for each issue: the union position, the management position or the recommendation of the fact-finder. Critics observe that this method encourages arbitrators to "split the difference" between the parties.

3. Wisconsin law provides for final offer total-package arbitration. The arbitrator must accept the union's total package or management's total package, or it must mediate a consent agreement modifying the positions of the parties. Proponents say the all-or-nothing stakes provide a greater incentive to settle outside of arbitration and encourage parties to come forth with more reasonable final offers. The arbitrator is less likely to choose a final offer that is "way out of line," the reasoning goes.

Opposition to Arbitration

Binding arbitration was originally proposed as an alternative to strikes among public employees. But many public employers and management negotiators have concluded that the "medicine" may be worse than the "disease."

The National School Boards Association, the U.S. Conference of Mayors and the National League of Cities have gone on record opposing compulsory interest arbitration.

The **Critical Issues Survey** for this report asked respondents to write in the three labor relations issues most likely to confront their district in the coming decade. Among the more than 50 issues mentioned, binding arbitration ranked 11th in frequency. Its ranking may have been low — only five percent of the respondents mentioned it — because districts in only seven states are forced to use arbitration as the last resort to impasses.

Labor relations experts predict arbitration will be

Englewood's Solution to Arbitration

A promising alternative to binding arbitration has been practiced in Englewood, Colo., a Denver suburb, since 1973.

Englewood's city charter provides a three-stage process for resolution of impasse: mediation, fact-finding and referendum.

Labor relations matters are heard by a five-member Board of Career Service Commissioners (CSC). Two members are appointed by the City Council, two are elected by employees and the fifth is selected by the other four.

When impasse is declared, the CSC conducts mediation and fact-finding. It is authorized to hire consultants to help in the process. If either party rejects the board's recommendations, the council may call a special election.

Since 1973, the city has gone to impasse three times, once each with police, firefighters and non-emergency employees. In all cases, the CSC unanimously upheld the city's position, and employees decided to settle rather than petition the council for an election.

City Manager Andy McCown pointed out in an interview for this report that commission members, as citizens, provide a good barometer of community sentiment on wage increases. Since the commission contains two members elected by the employees themselves, their decisions carry legitimacy with employees. McCown credits the city's impasse procedure with helping to foster a positive employee relations climate.

used increasingly as an alternative to the right to strike.

Below are some of the reasons management negotiators give for opposing binding arbitration:

● It distorts the collective bargaining process. When arbitration is a possibility, both parties hold back from compromising.

● Binding arbitration is antithetical to democracy. It transfers crucial decisions to a person who is not accountable to the taxpayers and who may not live in the community or the state. By granting a cost of living increase to employees beyond what the school district can afford, for example, an arbitrator may force a tax increase upon unwilling citizens.

Even more important is the impact an arbitration decision can have on the management prerogatives of a public employer. In Rhode Island, for example, a 1980 arbitrator's award stated that a fire department could not reduce the number of firefighters, pieces of equipment, number of fire stations or number of firefighters assigned to each piece of equipment. Similarly, said Frank Forbes of the National School Labor Relations Service, "a school district could be forced to maintain a given class size ratio, number of school buildings or similar items, even in the face of declining enrollment."

● Arbitration puts much authority in the hands of a person who may not be equipped to handle the job. Most arbitrators enter the profession handling grievance cases, which are essentially judicial decisions. Interest arbitration, some critics argue, is more of a legislative function because arbitration decisions have policy implications.

While grievance arbitrators are trained to interpret contracts, critics say, interest arbitrators must have knowledge of state aid formulas, tax rates and complex factors, such as a district's ability to pay.

● Unions have little to lose. "It is rare that an arbitrator will even consider awarding a union less than already offered by management," said Baltimore labor commissioner Jeff Austin. There is less incentive for unions to compromise, he explained, if the union knows management's final offer will be the floor of the final settlement.

● Binding arbitration is time-consuming and expensive. Recent studies reveal that the process sometimes takes more than a year and is not reduced "even when certain preliminary phases, such as mediation or fact-finding, are removed," Austin said. Costs for transcripts and attorney fees continue to escalate as well.

Help Shape the Law, If Possible

The best defense against binding arbitration is to avoid it altogether, according to Chicago attorney Fred Lifton. The National School Boards Association apparently agrees with Lifton. It urges school boards to mobilize their state association and parents to oppose binding arbitration.

Failing that, school boards might consider lobbying for inclusion of these safeguards in a binding arbitration law, as suggested by several negotiators:

Restrict arbitrability to the most crucial economic issues to encourage parties to negotiate rather than arbitrate.

Restrict the arbitrator to three choices: each party's final offer and the fact-finder's recommendation.

Use a three-member arbitration panel, rather than a single person.

Include a screening committee or other mechanism so arbitration will not be automatic.

Provide deadlines for mediation, fact-finding and arbitration.

Provide for limited court review where the arbitration panel may have been arbitrary, capricious or acting beyond its authority.

● There is no conclusive proof that binding arbitration prevents strikes. Although statistics to date seem to support the claim that binding arbitration averts strikes, Austin raised two valid points: (1) The statistics may only indicate that unions have gotten what they wanted, and (2) binding arbitration has been tried for a relatively short time.

● Arbitration may have a "narcotic" effect. That is, parties may rely on impasse procedures again and again. Note, however, that research is conflicting on this point.

The Other Side

Not all management negotiators are opposed to binding interest arbitration. Gary Ray, whose labor relations firm, Ray and Associates, negotiates for

some 30 school districts in Iowa, cited two advantages to compulsory arbitration in an interview for this report:

- Arbitration provides an end-point that precludes year-round bargaining. (Iowa law provides deadlines for mediation, fact-finding and arbitration, with a timetable that ends March 15.)
- If management has done its homework and has a strong rationale, it can win at binding arbitration.

Tips

Ray and others offer these tips on arbitration:

1. Don't be afraid to take a case to arbitration and make your determination known at the table. Many districts severely weaken their position at the bargaining table, he explained, by giving the impression they'll do anything to avoid arbitration.

2. Start preparing for arbitration early. By about the second bargaining session, Ray has an idea whether the contract talks are likely to end in arbitration. He begins doing more research on the issues to strengthen his arguments with his own team and to notify the other team that the board is serious about its bargaining position.

3. Hold a permissive item "hostage." The Iowa law contains a laundry list of mandatory subjects of bargaining that may be taken to arbitration. A district may have agreed to certain permissive items in the past, such as giving the union access to teacher mailboxes. By holding that item hostage, however, Ray may induce the union to settle before the mediation deadline. The reason: If negotiations reach impasse, the union might lose that privilege because association rights cannot be taken to arbitration.

4. Educate the arbitrator. If the arbitration concerns economic issues, Ray makes sure the arbitrator understands Iowa school finance law.

5. Use those facts that put the district's position in the best light. If salary is one of the issues on which the arbitrator is expected to make comparisons, the negotiator should check entry level salaries, the top of salary schedules and average salaries in other districts and then use the criteria which show the district to advantage.

6. Show long-range impact. When comparing union and management proposals, prepare charts showing financial impact two to three years in the future to underscore damaging effects a high award might cause.

7. Keep a record of sources of information. Being able to cite sources of information on comparability during cross-examination at the arbitration hearing gives management's case more credibility.

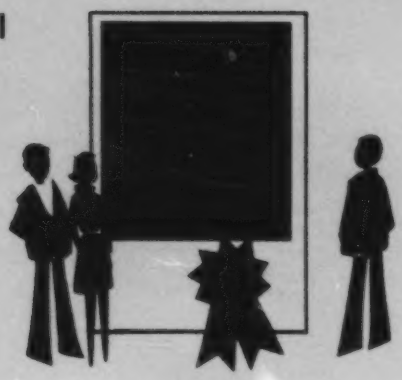
8. Expand positive answers; answer negative items succinctly. When being cross-examined, management's negotiator can sometimes turn a negative question to positive advantage. Those opportunities should be seized, while questions that have no such psychological mileage should be answered briefly.

9. Use public opinion to advantage. In Iowa, the first two negotiating sessions are public. Ray determines the dollar costs of each demand in the union proposal, including leaves, and makes that information part of management's presentation at the second meeting. One district had only $132,000 in new money, but the teacher union proposal totaled $750,000. When the discrepancy was pointed out, "the union was somewhat embarrassed," Ray said.

10. Stipulate the arbitrator's authority. It may be possible under state law to stipulate the extent of the arbitrator's authority when presenting the district's case for arbitration. A district facing binding arbitration should consult a labor law attorney about terms of the stipulation.

11. Choose the arbitrator carefully. Because arbitrators generally have much discretion in determining critical contract issues, the best defense is to select a thoughtful, competent arbitrator.

Chapter VI



Contract Administration

Contract administration is an extemely important — and sometimes overlooked — aspect of collective bargaining. The way the contract is administered affects employee relations, and it can influence the strength of management's position during the next round of bargaining.

School administrators interviewed for this report pointed out that many potential labor problems can be resolved at an early stage if the person charged with administering the contract uses candor and respect in dealing with the union. Conversely, a supervisor's approach to grievance handling — such as refusal to listen to oral complaints — can result in a loss of morale, increased tensions among employees and more grievances.

"Management loses more money through contract management than is spent in settling contracts," said Jeff Austin, labor commissioner for Baltimore who negotiates with its teachers.

Districts lose management rights through "sloppy management" that establishes "past practices," Austin explained at a seminar on contract administration sponsored by AASA's National Academy for School Executives. To illustrate, Austin said: When a principal permits teachers to do something expressly prohibited by the contract, the teachers can confront district negotiators at the next round of bargaining with a demand that this exception become district policy.

Example: A district contract requires teachers to work a seven-hour day and not to leave before the end of the work day. An elementary principal is asked by his best teacher if she can leave 15 minutes early on Wednesdays for a hair appointment. The principal reasons that the teacher always comes early and works hard. To deny her request will damage their relationship, even though there is a valid reason for denial. The principal permits her to leave early every Wednesday. At the next round of bargaining, the union may demand that teachers be allowed to leave 15 minutes early one day a week for personal reasons and cite this case of past practice as justification.

Important: The way to avoid such problems is to provide training for principals on the language of the contract and the perils and pitfalls in it.

Little training is provided: The survey for this report asked districts what kinds of training were provided principals on the collective bargaining process and contract administration. The vast majority left the question blank, indicating they provided no training. Others said their administrators attended sessions sponsored by state school boards or state administrators organizations. Still others said the chief negotiator in their district met with administrators to explain the new contract, clause by clause.

In some districts, a formal, extensive training program may not be necessary. One administrator said principals in his district received a thorough explanation of the contract the first time it was ratified and that subsequent contracts had few meaningful changes. Most survey respondents indicated that grievances are filed infrequently. Less than 20 percent of the districts had more than five grievances during the life of their last teacher contract, and nearly one-third of the districts had no grievances.

The potential for labor unrest exists in any district, however, and an unhappy union can flood a startled principal with grievances. Also, skills important in contract administration are often the same ones principals need to be good managers. Effective grievance processing, for example, requires that principals listen carefully to the employee's side of an issue and show a sincere interest in resolving it.

Training Musts

Negotiations experts generally agree that a training program on contract administration should include these topics:

- Understanding the collective bargaining process, including the purpose and role of the union.
- Understanding the state collective bargaining law.
- Understanding the current contract.
- Human relations training, including how to be a good listener, how to give constructive criticism and how to discipline an employee.

Topic for training: understanding the process. Once collective bargaining begins, supervisors must understand that their relationship with employees is permanently altered. One of the most important changes is that principals and teachers are on different sides when it comes to working conditions.

Before the bargaining relationship is established, school administrators have the attitude, "we're all in this together," said Sylvia Reed, associate superintendent for the Albuquerque (N.Mex.) Schools. "But when bargaining begins, teachers and principals are definitely in two camps about contract issues," she explained in an interview for this report.

Principals and teachers still share the common goal of educating children, Reed said, and principals must continue to support this function through efforts such as keeping order in school. "But there are other things principals may have to stop doing,"

How To Get a Grievance If You Don't Already Have One

Teacher union organizers have been greatly influenced by the work of Saul Alinsky, a professional organizer who was active in the 1960s and early 1970s. Alinsky's basic premise was that people organize around short-term issues involving conflict.

Carl Lange, a former union organizer who now advises school districts, explained Alinsky tactics in an interview for this report.

The goal, Lange said, is to look at the structure of an organization and devise a nonstandard way of attracting the organization's attention, so someone responds in a way that will upset union members.

Example 1: The union president walks into an elementary school principal's office in the middle of the morning and says, "I want to see Miss X, and I want to see her now." The blunt approach so angers the principal that he forgets to mention that the union official can see the teacher on her lunch hour. Instead, he responds, "you can't see her now. In fact, you can't see her until after she leaves the school building."

The union official waits until after school and tells the teacher and anyone else who will listen: "Would you believe your principal wouldn't let me see you on your lunch hour?"

A grievance is filed alleging that the principal has failed to provide reasonable access to employees. "It's very simple," Lange said. "I used to bait principals with that all the time."

Example 2: A union representative walks into the administration building seeking a copy of the budget. Instead of going to the business office, the representative walks up to a clerk and says, "I want to see the budget." The clerk, lacking authority to release the information, says, "I'll have to ask someone." When the clerk goes to another office, the union representative leaves and tells union members: "They wouldn't give me a copy of the budget! Can you believe that? A public record, and they wouldn't give me a copy."

Most contracts call for union access to bargaining data, Lange pointed out. Thus, this tactic provides meager grounds for a grievance alleging that the district has failed to provide access to information.

Such tactics are more common in larger districts and in states where unions are generally more militant. The past history of labor relations in a district would also have some bearing. Such tactics would be more likely if management-labor relations are traditionally hostile and in a district where one union is being threatened by another.

she continued. One example would be allowing teachers to leave early on certain days.

Another change is that school boards cannot unilaterally alter any policies and practices that in some way affect provisions agreed to in the contract. An example: Before collective bargaining, a district was deducting dues for membership in the National Education Association. When teachers gained collective bargaining rights, the district saw no problem in continuing the practice. Then the union began a membership campaign and a competing union began signing up members. Teachers were contacting the payroll office daily, beginning or discontinuing payroll deduction for union dues.

"Before bargaining, if district administrators became irritated, they would just say 'we're not going to do it anymore,'" said Reed. "Or they could impose restrictions, such as requiring 30 days' notice on changes. Under a contract, the union has the power to say, 'you agreed to it, now you're going to have to live with it.' And it may be two years before the contract comes up for renegotiation."

A contract with a "maintenance of standards" clause does not allow boards and superintendents to change any policies that affect working conditions, even if the specific policies are not referred to in the contract. Changing the mileage reimbursement formula, for example, would be a change in the conditions for employment and would require consultation with the union.

Tip: Reed advises districts that are bargaining for the first time to review all personnel policies and practices before negotiations begin. Procedures that are not being used should be eliminated from the books. Others that cause problems should be "cleaned up" through language changes. One potential problem area is a situation where one policy exists on the books and another is being practiced.

Topic for training: the role of the union. Principals, other administrators and school board members must be made aware of the role and effect of the union on contract administration. One district personnel administrator explained the role of the union to a group of principals in the following way: Unions, he said, are formed to meet four basic needs of employees: (1) to improve salaries and working conditions, (2) to improve the status and image of union members, (3) to provide job security and (4) to provide opportunities for advancement. Union officers must meet these needs to stay in office and to keep the union in business.

Furthermore, the administrator said, building representatives and districtwide officers of the union may have ego needs that must be met. Some of them enjoy being in the limelight and may provoke crises and grievances to prolong this recognition. Sometimes, a union member will file a grievance that the building representative may consider worthless. Politically, however, the representative cannot refuse to process the grievance and expect to be retained in office.

Contract administration experts say a principal must understand that grievances cannot be taken personally. A union leader who knows grievances bother a principal may encourage members to file more grievances.

Principals must also understand the changes that may occur once a union becomes active. An example: One of the best teachers in the school becomes the union leader. The same leadership skills that make her an effective teacher make her an effective union leader. In describing grievances in the union newsletter she says derogatory things about the principal. "This is the same person who formerly thought the principal was wonderful and said so," Sylvia Reed noted. "This can be very hard for principals to take."

Topic for training: the state collective bargaining law. Administrators must be familiar with the state collective bargaining law. It sets forth many ground rules, such as whether administrators are allowed to form bargaining units or whether binding arbitration of grievances is required in a contract. Any district whose state has a bargaining law should make copies of the law accessible to middle management. A district that is new to bargaining or whose state law is new or greatly modified should include an explanation of the law in any training session.

Topic for training: the contract. When a new contract is ratified, management should schedule a training session for principals on the provisions. And, while principals are the primary administrators responsible for managing the contract, central office staff should not be omitted from training.

The top management of a district should attend a general briefing on the contract as part of a year-round effort to make them more knowledgeable about collective bargaining.

Many central office administrators are uninformed about and uninterested in collective bargaining, Reed said. This causes problems, she believes, when top-level administrators see no reason to make suggestions during the formulation of management's negotiating position. Later, they may complain about "how the contract adversely affects their operation." Reed said. "I think everybody in

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How To Union-Proof Principals

The chief hazard of loose ties between a district's principals and its central office is that the union may "shop" for the principal most likely to give a favorable interpretation of a hazy contract clause.

Experts say one reason for filing grievances is to test contract language. When contract administration is not uniform throughout the district, "the union will pick the administrator whose interpretation of policy best suits the union," said Jeff Austin, Baltimore labor commissioner. He calls this practice "forum shopping."

How does a district prevent forum shopping? By improving lines of communication.

Austin suggested four remedies:

- Require principals to call the contract administrator (this may be the superintendent in a small district) when questions arise.
- Put teeth into contract administration by making it one criterion for evaluating principals.
- Analyze the amount of support that management gives building administrators and strengthen any weak links in the communications chain.
- Analyze building level administrators.

The union will develop a profile on each principal, and management should do the same, Austin said. Among the questions the union will be asking are the following: How knowledgeable are principals about the contract? Have they been trained? To what extent? Do they know how to deal with grievances? Can they be pushed or intimidated?

Management can act upon the information it derives from drawing profiles of principals, thereby blocking union attempts to seek out and manipulate an uninformed principal.

top management has to share the responsibility for management's bargaining position."

In Albuquerque, all administrators are briefed on the contract at a general meeting before school starts. Separate briefings follow for principals and staff from the personnel office.

"Most administrators are not going to read the entire contract," Reed said. A few will read the contract in advance, but most will wait until a need arises. Highlighting pertinent articles at a training session ensures that the principals are aware of the provisions and know where they are found in the contract.

Note: Briefings should be conducted throughout the year, as necessary, for new administrators and those who receive promotions.

Topics to be covered at briefings for administrators include:

- The history of the negotiations, including why certain provisions were approved. "Most union leaders are present during the negotiations; most of management's are not," Baltimore's Austin pointed out.
- Issues that were raised during the negotiations.
- Items that were not accepted.
- Specific language changes.
- New interpretation of old language.

In some districts, principals learn about provisions of the negotiated contract from the union representative in their buildings rather than from the school administration. The obvious disadvantage of this approach is that the principals learn only what the union wants them to know.

A union goal, according to one labor relations expert, is to get everything in contract administration that was not obtained at the bargaining table. "The way the union succeeds is by knowing management's policies, practices and procedures better than management," said Austin.

Topic for training: human relations. A good topic for small group meetings and an important preparation for good contract administration is human relations training, according to Carl Lange, director of labor relations for Schools Legal Service (SLS), Bakersfield, Calif.

Lange stresses to principals that they must show respect for employees. "Some principals forget they

were once teachers themselves," he said in an interview for this report.

Human relations training is a "sensitizing process," Lange said. It forces administrators to think through how they will react if a situation comes up.

One session offered through Lange's agency covers the evaluation of employees and the importance of body language. "How you sit, what you do with your hands and how you ask and answer questions are all things to take into consideration in a sensitive situation like firing someone," he explained.

Note: Districts should not overlook the need to train principals in the evaluation of personnel. Fred Lifton noted, for example, that the same skills necessary for good contract administration are needed for effective evaluation of personnel.

Who Should Handle Contract Administration?

Not every district handles contract administration in the same way. Districts that use an inside negotiator generally delegate the responsibility for contract administration to the same staff member. Some small districts that use an outside consultant during negotiations leave contract administration to the superintendent. A few others use consultants for both negotiations and contract administration.

Alternative 1: In-house negotiations and contract administration. Large districts often have staff members who specialize in contract administration. For example, Bob Barrett, employee relations director for the 50,000-student Brevard County (Fla.) Schools, negotiates and administers two collective bargaining agreements, lobbies the state legislature (about 20 percent of his time) and handles grievances filed by non-union employees.

A few medium-size districts employ a full-time employee relations director because of the large number of unions present. Harold Hillmer, employee relations administrator of the 10,700-pupil Granite City (Ill.) Schools, negotiates with seven unions.

A more common situation in districts of 15,000 or fewer pupils is for the person charged with negotiations and contract administration to juggle from 2 to 10 other responsibilities, according to responses to the **Critical Issues Survey.** Contract administrators are often administrative assistants, assistant superintendents, directors of personnel or directors of the business office.

Other duties sometimes combined with contract administration include: Title IX and affirmative action, maintaining and revising board policies, supervising the district's transportation, food services and maintenance operations, and coordination of legal services.

Alternative 2: Outside negotiator, inside contract administration. An outside negotiator is necessary in Washington where teachers are highly organized, said Supt. Cliff Campbell of the 300-student Quilcene School District in an interview for this report. He explained that the Washington Education Association, an affiliate of the National Education Association, sends sophisticated state-level negotiators to small, rural districts as well as to larger districts.

Quilcene contracts for negotiations assistance with the Washington State School Directors Association. It employs several labor attorneys to negotiate with school districts in specific geographical areas of the state. The association charges participating districts according to their size.

Supt. Campbell and the attorney provided by the association are the only members of the district negotiating team. Following negotiations, Campbell administers the contract. He calls the attorney if a question arises over contract interpretation.

Campbell's approach to contact administration is to encourage teachers to come into his office and talk over problems before they develop into formal grievances. In Campbell's view, successful contract administration depends on three things:

- An open door policy with teachers.
- Clear contract language.
- Complete understanding of and strict adherence to the contract by principals.

Contract administration in Quilcene is "very simple," Campbell said. The district has only one principal, and that principal shares Campbell's belief that the contract should be followed rigidly.

In a larger district, training for principals should not be left to chance, Campbell cautioned. In his previous district of 5,000 pupils, Campbell supervised 10 principals. There, he said, the principals reviewed all changes in the contract at a meeting, and they were instrumental in formulating management's position at the bargaining table.

Alternative 3: Outside negotiator and outside contract administration. The 1,400-student Newaygo (Mich.) Public Schools hires separate consultants for negotiations and contract administration. A business manager from another Michigan school district negotiates for Newaygo, and the district has an attorney on retainer who advises on grievances. The law firm, located in nearby Grand Rapids, specializes in labor relations. "They've never lost an

What Unions Want

"The union considers its representatives employees of the union first, and employees of the district second," said Jeff Austin, labor commissioner for Balitmore. Basically, he said, unions want seven things: a share of the power, access to employees, access to management, paid time off, "super" seniority, multiple forums for redress and opportunities to represent employees.

A share of the power. "The union doesn't want to run the school — that would undermine its ability to criticize," said Austin. "But it wants to share in the process. It will push to participate in setting policy."

Access to employees. "The union will seek as much access to employees as it can get." This means, Austin continued, that management will have to decide if the union will be allowed to: see employees during lunch, preparation periods or student recess; post notices on employee bulletin boards; use the internal mail system; hold a meeting after school on school property; or address an orientation session for new teachers.

Access can be a lever in bargaining. In Baltimore, teachers must negotiate time off for union business and access to employees. The city allows, but limits union access.

Caution: If a district allows community groups to use its facilities for meetings or to visit schools to solicit for charities, it cannot discriminate against the union on access.

Access to management. The union will seek formal recognition of its right to talk to management, Austin said. And, when a principal makes changes, it is generally advisable to let the union representative know in advance. He or she can help get compliance.

"What the union fears most is that management will have direct communications with employees," Austin said. Most unions will insist that management not talk directly to employees about terms and conditions of employment. If management releases important information in a newsletter without letting the union know in advance, the union may make the next round of negotiations difficult.

Paid time off. Unions will seek as much paid time off as possible for employees. This time may be used to attend state and regional union meetings, to attend labor-management committee meetings or to conduct negotiations on school time. **Tip:** Austin's rule on time off is this: "If the union wants time off for members, the union should pay for it."

"Super" seniority. One negotiating demand that districts can expect in the future is "super" seniority for union officers. In other words, union officers would be the last to be laid off, regardless of years of service. The goal of super seniority is to maintain the stability of the union.

Unions may attempt to extend super seniority provisions to job bidding and promotion as well as reduction in force and to preclude involuntary transfers. Super seniority "is probably a mandatory subject of negotiations," if it is not precluded by state law, Austin said.

Multiple forums. The union will file an issue in every forum it can. Conceivably, a union could file a single complaint as a grievance, a violation of equal employment opportunity, an unfair labor practice and a court suit — all at the same time. If that happens, Austin advises deferring the grievance to the Equal Employment Opportunity Commission. (Note: A person skilled in drafting contract language should be able to reduce or prevent opportunities for the union to use multiple forums).

Opportunities to represent employees. The union will seek to represent employees on every occasion, from teacher performance to a change in school policy, Austin said. One yardstick for districts is the Weingarten Rule, set in 1972 by the U.S. Supreme Court for private sector employees. It said that employees should determine need of union representation "when they have reasonable grounds to fear an interview may result in some form of discipline." Furthermore, the Supreme Court ruled in 1978 that the right of representation arises only at the request of an employee to the union. **Note:** It is questionable whether a teacher has the right to union representation during a typical evaluation conference.

arbitration case," Supt. Norman Walker commented in an interview for this report. Newaygo had eight grievances in three years, five of which went to arbitration.

Walker meets weekly with principals to discuss any problems. When such meetings uncover a need for training, the district arranges for specialists to meet with the principals. One principal, for example, wished to dismiss a teacher, but the evaluations did not properly support unacceptable performance on the part of the teacher. The district contracted with a consulting firm to present a workshop on "corrective discipline." The topics covered included how to write a letter of dismissal and how to write an improvement plan for a teacher. Another workshop focused on the implementation of collective bargaining contracts.

Another example of the use of an outside negotiator and outside contract administration comes from the Wasco (Calif.) Union High School District. This 1,400-student district uses a single agency, Schools Legal Service (SLS) for negotiations, grievance handling and training. Principals are instructed to notify the district office as soon as a grievance is filed. It, in turn, notifies SLS. The agency assists in the investigation and in drafting the response. If SLS is notified before an informal conference, a consultant from the agency advises the principal on how to handle the conference. If the principal handles an informal conference improperly, SLS and the district can still resolve the problem at the first written level, said the agency's Carl Lange.

A word of caution: As in the case of inside and outside negotiators, there are sharp differences of opinion about the advisability of having an outsider handle contract administration.

"I have a strong bias in favor of having labor relations expertise on your payroll," said Frank Forbes of the National School Labor Relations Service in an interview. "It works best for accountability and consistency, for the whole management team-building effort. Otherwise, I think you're really ducking the tough questions — saying, well, we didn't do it. It's that consultant.

"You might still call in outside legal or other special assistance," he continued. "But the decision to call in outside help should be based on expert knowledge internally."

Another opponent of having an outsider administer the contract is John Donato, superintendent of the 1,900-student Hartford (Wis.) Public Schools. Donato did his own negotiating as director of employee relations in Florida before becoming a superintendent.

In Hartford, an outside attorney is used for negotiations, but contract administration is strictly in-house. "The pitfall of having an outsider handle contract administration," Donato said in an interview, "is that the outsider doesn't know what the problems are."

Donato refers to himself as a "shirt-sleeve superintendent," one who is out in the halls mixing with students and teachers. He believes that a superintendent with first-hand knowledge of what is happening in the schools is not likely to be hoodwinked with bogus grievances. When a grievance masks a deeper problem, an inside contract administrator will know the persons involved and can analyze the problem and creatively solve it, he said. That does not mean that the administrator caves in on grievances, he added. "A good administrator may deny the grievance but solve the problem that inspired the grievance."

Like many others consulted for this report, Donato places a high priority on giving union leaders free access to his office. Accessibility and an interest in problem solving build credibility, which is the single most important factor in successful employee relations, either at the table or during the year, the superintendent said.

Training Format

Training for contract administration takes a variety of forms around the country:

- A formal meeting after the contract is signed to discuss articles of the contract.
- Small group meetings to role play grievance situations.
- Discussing contract administration concerns as one item on the agenda of monthly meetings for principals.
- An "open door" policy by the director of employee relations to encourage principals to call whenever a question arises.

Formal Meeting

The formal meeting may range from a two-hour session to an all-day workshop.

The 2,700-pupil Pearl River (N.Y.) School District presented a half-day Saturday workshop for administrators and school board members shortly after ratification of a new five-year contract. About six weeks before the workshop, Ronald Becraft, assistant to the superintendent for personnel, sent questionnaires to participants to determine the specific contract articles on which they needed infor-

mation. Becraft suggested in an interview for this report that other districts consider this tactic so they can tailor training sessions to the needs of their administrators.

Another of Becraft's tactics is to use an outsider to drive home a point at training sessions. To illustrate: A speaker from outside the district, arbitrator Jonathan Leibowitz, stressed that both sides to a collective bargaining contract have an obligation to follow the letter of the law.

Becraft noted that some administrators understand the contract but try to "skirt" the law. Having an outsider tell the administrators this is not permissible carries more weight than the same message from a fellow administrator, Becraft explained.

Taking part in a half-day seminar to explain the new contract to district administrators were Becraft, the superintendent and two outsiders: an arbitrator and the board's attorney. A sample agenda follows:

Contract Management
Administrative Workshop

Time	*Activity*
8:30	Introduction
8:40	Contract management: what does it mean?
9:30	Questions and answers
10:30	Break
10:45	Review of contract
11:30	How does the new agreement affect administrators?
12:30	Update on changes in the law governing teacher dismissal hearings

Small Group Meetings

Often, the most practical and popular training sessions are those that give participants "hands-on" experience.

In many districts, administrators role play a grievance hearing, with one administrator playing the teacher and another playing the principal. The person taking the principal's part will frequently have handled the type of situation being depicted. To add interest, two versions can be presented: one in which the grievance is handled well, one poorly. Participants and spectators can then discuss why one meeting went well and the other did not. Another approach is to have one principal take a "hard line" and the other a "soft line" on a grievance.

Quick Tips For Management On Contract Administration

- Provide a parallel mechanism for handling employee complaints that do not fall within the grievance procedure. The administrative complaint procedure could have a similar number of steps, but it would not include arbitration. The last step in the complaint procedure could be the superintendent.
- Designate responsibility for and monitor administration of the contract.
- Require principals to follow district policy in interpreting and administering the contract.
- Involve principals in the development of grievance forms and other materials they will be using.
- Provide principals with an interpretation of a new contract as soon as possible. Principals should receive their information from management, not from the union.
- Don't base the evaluation of principals on the number of grievances they receive.
- Don't let principals use the contract to retaliate against teachers.

Monthly Meetings

One way the contract administrator can keep in touch with principals is by attending their monthly meetings. If a particular contract clause becomes the source of many grievances, the administrator can reserve a spot on the agenda to review contract language and disposition of grievances. In a small district, this function may take place at the superintendent's weekly or monthly meeting of administrative staff.

Open Door Policy

Much valuable on-the-job training can occur if principals are encouraged to call the person responsible for contract administration as soon as a grievance is filed.

Jack Stewart, personnel administrator for the

New Orleans Public Schools, said an important part of his job is "being open and available to principals" to answer questions on contract provisions. Sylvia Reed went a step further when she was employee relations officer in the Jefferson Parish Schools, a suburb of New Orleans. She would sit in on the level-one grievances in the principal's office to ensure that the contract was administered consistently throughout the district.

Caution: One interviewee noted that a union could fully occupy the director of employee relations just prior to negotiations with a flurry of grievances, if the director attended all grievance sessions conducted by principals.

Accountability for Principals

"I would draw and quarter any principal who was settling grievances I didn't know about," said Bob Barrett, director of labor relations for the Brevard County (Fla.) Schools in an interview for this report.

Principals who suspect that a grievance may be filed are encouraged to talk with Barrett about the contract language involved. Once the grievance is filed, the principal is expected to investigate the complaint and answer any questions from Barrett.

Experts give three reasons why principals should confer with the central office before responding to a grievance:

Employee Relations Director: What Are the Duties?

What are the duties of a director of employee relations? What should be in the job description for that position?

To answer those questions, the AASA commissioned a study that led to a model job description for an employee relations director. It was published in 1974 in *Helping Administrators Negotiate.*

The job description has been updated for this report, based on critiques by several employee relations directors around the country. Here's the modified model job description:

Preparing for Negotiations

- Establish financial parameters for the district in consultation with the board and administrators.
- Develop management proposals and negotiating strategies.
- Meet with district administrators, especially principals, to get suggestions for management proposals.
- Study state laws, court decisions and other litigation relevant to collective bargaining.
- Analyze employee proposals in consultation with the district business manager and management team.

At-the-table Activities (if the director is the negotiator)

- Serve as chief negotiator for management.
- Direct management's team and keep other members of management informed of the progress of negotiations.
- Draft negotiated agreements reached with employees.
- Assign a member of the team to keep records of proposals and counterproposals by both sides. Maintain those records.

Administering the Negotiated Agreement

- Serve as management's chief adviser in all grievance matters.
- Serve as management's chief adviser in the interpretation of adopted agreements.
- Consult with principals and other management personnel to assure their understanding of and compliance with adopted management-employee policies.
- Initiate management's grievance activities (if the state allows districts to file unfair labor practices against the union).

Administering the Employee Relations Program

- Serve as chief adviser to management concerning employee relations matters.
- Conduct inservice training of managers in grievance processing and other aspects of contract administration.
- Develop and implement employee relations policies and procedures that management should follow in administering the contract.

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- Consistency of contract interpretation.
- A desire to settle at the lowest level.
- A desire not to reverse a principal at a higher level.

Note to superintendents: Principals must be encouraged to ask questions about the contract and how it should be administered, as the need arises.

Note to principals: It's a good idea, experts say, not only to have a plan of action for handling a situation bearing on the contract but also to check it out with the contract administrator (or superintendent) before implementation.

Evaluating Principals

Some districts include contract administration in job descriptions for principals; others communicate the responsibility orally with principals.

Superintendents, associate superintendents and directors of employee relations consulted for this report agreed, however, that principals should not be held accountable for the *number* of grievances filed. Why? The number of grievances may be a reflection of union activity — a desire to harass a given administrator. Or it may be that all the union activists are concentrated in one building.

An emphasis on the number of grievances filed may cause principals to cave in to employees to avoid a grievance when they should be standing firm to uphold a management right. As noted by Barrett, a large number of grievances may reflect positively on a principal.

How are principals evaluated in terms of handling grievances? Here's one suggestion: If a principal gives the employee an opportunity to fully air a problem, checks the facts and renders a decision in keeping with management's position on a contract clause, the principal should receive a favorable evaluation. The fact that a grievance is filed or appealed to a higher level should not necessarily reflect negatively on the principal.

Here are several suggestions to aid principals in their role of contract administrator:

- William Grady, superintendent of the 2,500-pupil Passaic County High School District, Little Falls, N.J., stresses careful handling of grievances at the oral stage — "where 95 percent of the grievances should be resolved." Grady advises principals to make formal appointments with teachers for the oral interview after the initial contact about a grievance. The formal appointment, he believes, permits a "cooling off period" and gives both sides a chance to clarify the issues. During the oral interview, the principal is expected to have the teacher pinpoint which clause in the contract was allegedly violated.

- In Waynesboro, Pa., the assistant superintendent for business affairs meets individually with each principal before the opening of school. He points out any weaknesses in contract administration skills on the part of the principal (e.g., not being a good listener or unnecessarily creating confrontation) and describes the kinds of improvements expected during the year.

"Principals can do many things to prevent grievances," Waynesboro Supt. William Leary said in an interview for this report. "If principals are open with their staffs, hold weekly grade-level team meetings and truly listen to what the teachers have to say, they can defuse a lot of problems that would surface as grievances," he explained. This positive approach can pay dividends at the bargaining table, too. "If a principal is handling his or her share of the discipline problems and assisting teachers in maintaining order in the schools, the discipline code probably won't come up as a union item at the bargaining table," Leary said.

Waynesboro's track record. "We've had four grievances in the last six years," Leary said.

School Publications On Contract Administration

Two types of contract administration manuals were found in research for this report. One type, a handbook, gives tips on the contract administration process. The second type, a notebook, contains the contract and the directives about the contract sent to principals throughout the year.

Consensus is lacking on the advisability of writing and distributing a contract administration manual. Some school administrators and collective bargaining experts consulted for this report said busy principals need an up-to-date reference on contract administration. Others said they were reluctant to put contract interpretation on paper for fear the union would use the information against management.

Here are two views on the subject:

Opposes: A written contract manual "would generate more trouble than it's worth," said Jack Stewart, personnel administrator for the New Orleans School District. The district does not publish

How To Juggle Negotiations with Other Jobs

Ronald Blake and John Grogan both have had much practice in juggling job responsibilities. As administrative assistant to the superintendent in the 5,700-student Bloomington (Ill.) Public Schools, Blake has nine duties in addition to negotiations and contract administration. As assistant superintendent for personnel and business affairs in the 5,000-pupil Waynesboro (Pa.) Area Schools, Grogan has seven duties in addition to employee relations.

Both administrators confessed in separate interviews for this report that some of their duties suffer under the press of negotiations. But both also offered practical tips for making a multifaceted job go smoothly. They advised:

1. Negotiate multiyear contracts. Bloomington negotiated 2 two-year teacher contracts in four years with a reopener on salary for the second year of each contract. The district did not suffer by reopening, said Blake, because it has a strong management-oriented contract. In Pennsylvania, both budgeting and preparation for negotiations come in December, placing a strain on Grogan's office. With a multiyear contract, Grogan says he can concentrate strictly on the budget during "off" years.

2. Train principals to call when a question comes up. The rule of thumb in Waynesboro is that principals will call prior to going out on a limb, said Grogan. He also encourages the union president to discuss issues with him that could become grievances.

3. Plan time realistically. Don't try to begin some new program or innovation during negotiations, Grogan warned. "All you can do is 'maintain' on the other tasks."

4. Plan for the day. "You have to set aside a given amount of time each day to do basic things," said Grogan. The time management technique of making a daily list and checking off each item as it is accomplished helps him.

5. Plan for the year. Negotiations consume much of Blake's time in the spring, so he tries to accomplish some of his once-a-year tasks in the fall.

6. Call in "reinforcements" (other administrative staff members) when appropriate. When Bloomington decided to improve teacher evaluation, Blake called on the teaching specialist to advise principals on what to look for during observations and how to write an evaluation.

7. Review the contract with administrators at least once a year. Even under a multiyear contract, Blake meets with principals once yearly to stress procedures that must be strictly followed and to give administrators a chance to reise questions.

8. Be patient. "You can't get excited about the problems that crop up daily in a job like this," said Blake. "You'll become an alcoholic or a nervous wreck." Instead, he suggested, problems must be tackled one by one.

the responses to grievances that reach the level of superintendent, because other school personnel might get ideas for grievances, Steward said. When a new contract is ratified, Stewart and his boss, Assistant Supt. Jerry Lee Hart, meet with principals to explain the new provisions.

"Then, we turn them loose and let them manage their own schools. If they have a problem, they call us and we give our interpretation and suggest methods of operating within the confines of the contract. The minute you put these suggestions into written form," Stewart commented, "it becomes a past practice." He added: "A manual might be desirable in a state with a comprehensive law and extensive regulations. We just don't perceive a need for it here." (Louisiana has no collective bargaining law.)

Favors: Robert Smith, director of employee relations for the Hamilton County Schools, Chattanooga, Tenn., gives principals a looseleaf notebook with a typewritten copy of the contract. It has wide right-hand margins. At a workshop on the new contract, principals are encouraged to make notes in the margin. As the school year progresses, Smith issues contract administration newsletters to respond to questions called into his office.

Copies of the newsletter are sent to the president of the teacher union and to the chairperson of the teacher grievance committee. "Why not let them know what my feelings are on things?" he said. "If the (union) president has a problem, he can call me and work it out. We've been very successful following this approach.

"I don't believe in secrecy," Smith continued. "If I make a decision, I have to stand by it. I don't have a problem with letting a person know how I feel."

Note: The decision of whether to publish a contract administration manual seems to depend on the local climate of the school district, the complexities of the contract and the laws governing bargaining, and the philosophy and personality of the person in charge of contract administration.

Suggestions for use of a contract notebook: "The contract is interpreted as you live with it," said Sylvia Reed of Albuquerque. As a consequence, compiling a manual is "an ongoing process." When Reed was director of employee relations in Jefferson Parish, La., she sent the contract to principals in a looseleaf binder. Handouts from inservice training sessions and memoranda interpreting articles were issued as addenda to place behind the affected contract article.

Carl Lange of Schools Legal Service suggests a different way of using a contract notebook. Each section of the contract, he said, should be followed by lined pages. Principals can make notes on the pages whenever a problem or concern comes up. When negotiations roll around, the notes are compiled by Lange to determine which provisions are causing problems. In analyzing formal grievances, he said, the notebook notations "give evidence of structural and technical problems with the contract."

Communicating With Employee Unions

One way some school districts have encouraged communication is through meetings between the superintendent or director of employee relations and presidents of school employee unions. Such meetings do not have to be a formal part of the contract. In fact, management has greater flexibility if the structure is not written down.

Districts have developed various ways of communicating with unions, including monthly meetings, meet-as-needed and advisory committees. Descriptions follow:

Monthly Meetings

At the union's request, the superintendent of the New Orleans School District meets with the union president monthly to discuss problems and concerns that affect employee groups. The only stipulation, said Jack Stewart, district personnel administrator, is that the issue cannot be a grievance. The meeting may include several union members and several members of the management team. Past meetings have addressed "generalized problems," such as a shortage of a particular textbook or a "payroll quirk" that employees did not understand, Stewart said. Other meetings might address the progress of a new educational program or an improved health insurance benefit.

While the purpose of the meetings is not to discuss grievances, the free exchange of information sometimes heads off grievances.

In Waynesboro, Pa., Supt. William Leary meets monthly with separate committees to discuss concerns that affect groups and individuals. The meet and discuss committee, for example, is composed of one or two elected representatives from each of the district's 10 school buildings. Under the Pennsylvania Labor Relations Act, meet and discuss committees bring together management and members of the bargaining unit to discuss issues that are policy related and not in the contract.

The superintendent's advisory council in Waynesboro is also composed of elected representatives (different from those on the meet and discuss committee). The council discusses individual problems that are unrelated to the contract, such as a complaint about school supplies. The council includes only representatives of non-management professional employees. Supt. Leary wants to set up a parallel committee for non-professional employees, who are not currently unionized. He believes that meeting the needs of employees through such committees can help forestall unionism.

Meet as Needed

Joe DiPaolo, employee relations director for the Jefferson County (Colo.) Public Schools, and the president of the teacher union have an understanding that they will meet whenever a problem comes up. After a three-year agreement was signed, for example, both sides recognized problems with the teacher transfer provision and worked out a memorandum of understanding to clarify it. Because of the union's structure, the union president had to take the agreement back to the board of directors

for approval. Once the directors approved, the president and DiPaolo signed the memorandum, which is on file in DiPaolo's office. The union then notified teachers of the clarification; DiPaolo notified administrators.

Note: Such arrangements are not incompatible with a zipper clause, which in effect closes negotiations until the next round of formal bargaining. "Two parties can voluntarily change a contract at any time," noted Frank Forbes of the National School Labor Relations Service. "A zipper clause says there is no *obligation* on the part of management to change any items during the course of the contract."

Advisory Committees

The Albuquerque Public Schools has a number of advisory committees made up of labor and management representatives. The committees meet to formulate recommendations for the next round of bargaining on the development of job descriptions, salaries, benefits or similar topics. The committees usually discuss things management does not want to grant, the district's Sylvia Reed explained candidly.

Tips: If such committees are written into a contract, Reed suggested that the calling of meetings should be left to union initiative or a limit should be placed on the number of meetings, such as the committees "shall meet no more than once a month." Another alternative would be to say that the committee *may* meet bimonthly, which means it is not obligated to meet that often.

Another suggestion from Reed: Keep notes of what was said at the bargaining table concerning the formation of a committee. "Remember your intent," she advised.

Caution: Labor-management committees can become "sub-negotiations sessions," according to one New York State respondent to the **Critical Issues Survey.** He suggests keeping such committees out of the teacher contract. (He tried unsuccessfully to get a provision for such committees removed from the contract in his district.)

"The union's mission is to get all it can," the respondent said in an interview for this report. "Union officials set up a meeting of the committee, and you find out they want to remove a principal." Provisions for such committees started to appear in contracts in the late 1960s, he concluded, when "inexperienced people, bargaining for management, did not realize the long-range implications of some of the provisions."

Some labor-management committees work quite well, but a risk is involved, said Frank Forbes. "Unless management keeps clear internally the purpose of the labor-management committee, the result is continuous bargaining — or that's the way it's perceived. And if it gets perceived that way, it becomes that way."

The lesson: Labor-management committees are one of many ways to work on problems and they can be constructive, but they are best kept out of contracts.

Chapter VII

Grievances and Arbitration

Responses to the **Critical Issues Survey** for this report indicate that the number of grievances filed in most school districts is small. Nearly one-third of the districts (31 percent) said they had no grievances during their last collective bargaining contract with teachers. Another one-third had between one and five grievances filed. Only 14 percent had six or more grievances, and many of these covered multiyear contracts. (Totals do not add up to 100 percent because the question remained unanswered by districts not engaged in collective bargaining.)

More than one-half of the districts had no grievances taken to arbitration, while 21 percent had from one to five taken to arbitration. Only two percent of all districts had six or more arbitration cases.

The seriousness and possible effect of grievances and arbitration, however, cannot be judged by the number of occurrences. While districts with no grievances probably enjoy fairly good relations with employees, one grievance taken to arbitration can throw an entire district into turmoil. In the words of one administrator from a medium-size school district: "You don't need more than one good one."

Types of Grievances

Grievances generally fall into these categories:

- Legitimate grievances, filed to test contract language.
- Political grievances designed to harass a principal or supervisor.
- Political grievances designed to give visibility to a union during a "down" period, particularly during a mulit-year contract.
- Political grievances brought because of the identity of the teacher involved. The teacher, for example, could be a top union official who wants to bring a grievance or, conversely, the person bringing the grievance could be an opponent of the union.

"Legitimate grievances are rarely filed in a properly managed school district," said Bob Barrett of the Brevard County (Fla.) Public Schools. "In my district, it is more often the desire of the union to test certain language." That is one important reason why principals should coordinate handling of grievances with the central office. The union may target a principal who is strictly interpreting the contract, flooding the school with grievances to annoy the administrator.

Note: The union is not alone in testing contract language. A district may tacitly invite a grievance to test unclear contract language. "You may choose to gamble, to take a stand," said Sylvia Reed of the Albuquerque Public Schools. "You're not sure whether you'll win or lose, but if an arbitrator rules in your favor, then you've won it."

A decision to initiate a grievance would depend on the stakes involved and the likelihood that the decision would support management.

Why grievances occur: Grievances are most likely over issues involving management discretion, such as the transfer of teachers, class assignments and decisions over personal leave and sick leave. The keys to successful contract administration on these issues are fair play and knowing the contract.

Many grievances allege discrimination or favoritism. A teacher who has a class full of difficult students may be disgruntled by a colleague with an "easy" class. The principal's role in this situation could be to demonstrate that student assignments are made in an impartial way, such as pulling names out of a hat. If, on the other hand, the contract requires a principal to observe a teacher three times before an evaluation is completed, the teacher has a

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right to grieve if the principal makes only two observations. Such mistakes can be avoided by thorough knowledge and administration of the contract.

Employees also file grievances over the way they are treated. A principal, for example, may angrily reprimand a teacher in front of the teacher's colleagues. The central office can't do much about this kind of problem, except to build sensitivity through human relations training. No violation of the contract is involved, and the issue is best patched up at the school level.

Quick Tips on Arbitration

- ✔ When preparing a case, study arbitration awards of similar cases for precedents.
- ✔ Prepare management witnesses through a "dry run," with someone playing the role of the union advocate who tries to "bait" management witnesses.
- ✔ Witnesses should not read a statement or attempt to answer questions by reading words from a paper.
- ✔ Examine the district's case from the union's point of view.
- ✔ Rely on facts, not debating skill, to convince the arbitrator. (Some advocates insist on preparing a brief.)
- ✔ Do not wait until the last minute or force a subpoena before sending background material to the other side.
- ✔ If witnesses do not know an answer or do not understand a question, they should say so.
- ✔ Witnesses should confine their replies to the questions. They should always tell the truth. A witness should attest to any prehearing preparation.
- ✔ If the union advocate raises an objection, the witness should wait for a cue from the management advocate before proceeding.
- ✔ Management witnesses and advocates should display courtesy toward other participants at all times.

Pointers on Grievances

1. Define "grievance" narrowly. The contract must specify that employees may grieve only violations of the express terms of the contract. In some states, state law or court decisions have widened the scope of allowable grievances. In New Jersey, for example, the State Supreme Court ruled in one case that employees may grieve board policies and administrative decisions that affect terms and conditions of employment. Unless required by state law, districts should not agree to such language because it opens the grievance procedure to almost every conceivable form of complaint.

2. Set specific time limits. The employee should have only a certain amount of time to file a grievance after a violation occurs or becomes known to the grievant. The clause typically also gives the principal a certain number of days to respond to the grievance. **Note:** specify calendar or working days to avoid confusion.

3. Limit the number of steps in the process. Districts should not include so many steps that they lose sight of the goal: a procedure for settling complaints in a timely and economical fashion.

The number of steps is determined by the size of the district and the number of administrative levels normally used in making decisions, said Frank Forbes of the National School Labor Relations Service. Thus, a small district may have only two formal steps: the principal and the superintendent. Even the largest district, Forbes suggested, need no more than four steps internally, with arbitration a possible fifth step.

4. Get something in return if grievance arbitration is granted. Should a district agree to grievance arbitration? Several negotiators and administrators interviewed for this report said they see no particular problem with grievance arbitration. They contend that it is less expensive than an appeal to the courts and, they say, arbitrators typically have more experience with grievances than judges. Another advantage cited by some negotiators and administrators: grievance arbitration gives employees a feeling that they can get a fair hearing.

What is worse than agreeing to grievance arbitration? Agreeing to bad language in the hopes of averting binding arbitration, Forbes said. Five years later, he noted, the district may wind up with binding grievance arbitration *and* poor language, which is a "horrible" situation, in his opinion. Granting grievance arbitration should be used as a

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lever to "clean up" contract language and get something management wants, such as a management rights or zipper clause or a narrow definition of a grievance.

5. Limit the authority of the arbitrator. arbitrator clause should specify that the arbitrator has no authority to add to, subtract from or modify the specific terms of the contract in reaching a decision. The arbitrator should also be limited to the issues brought by the parties to the hearing.

6. Vary the end steps for grievances. A district can limit the types of grievances that may be taken to arbitration. If the contract permits employees to grieve board policies, for example, such grievances should end with the board of education.

7. Specify who pays for the arbitration. In most districts, each side pays its own costs (e.g., legal fees) for carrying a case to arbitration. Some contracts call for the parties to split the arbitrator's fee; others call for the "loser" to pay the fee. Experts point out the difficulty in determining the "loser" in some instances because the arbitrator may give something to both sides. For example, the arbitrator may uphold the grievance but narrow the implications to the point that management would consider the decision a "win."

8. Specify who can take the case to arbitration: the union, the employee or both. Only the union should have the right to carry a grievance to arbitration, said Tom Dillingham, personnel relations specialist with the Montgomery County (Md). Public Schools. Only grievances with merit should be carried to arbitration because of the expense involved, he explained in an interview for this report. In most cases, he said, the employee will want to appeal a grievance. He stressed, however, that the grievance procedure is an agreement between the union and the district, not between an employee and the district. Furthermore, he noted, the union does not want employees to have the authority to press every grievance to arbitration and make the union pay for it.

The Grievance Meeting

In most districts, the grievance procedure follows this course in a series of meetings:

Step 1: Principal (informal discussion).
Step 2: Principal (formal meeting).
Step 3: Superintendent or designee.
Step 4: Arbitration.

The most consistent advice in the reams available on the handling of grievances at all levels is that supervisors should diligently pursue the full story from employees. To do this, a supervisor must be sincerely interested in what the employee has to say and not be concerned with mounting a defense. Such thoughts get in the way of active listening, and they shift the focus from an objective determination of the facts.

Instead, the supervisor must hear the employee uninterrupted or ask questions that will cause the employee to elaborate on the details. Questions should elicit more than a simple "yes" or "no" and should be aimed at finding out who, what, when, where and why.

Whatever is said at the principal's level should be admissible evidence later, according to Chicago's Fred Lifton. This means the principal should listen carefully to the grievance and ask questions, but not express himself or herself. It means not agreeing to anything, not giving defenses to try to justify what happened. The principal should keep a written record and may want to have a secretary taking notes during the meeting.

What about tape recording the meeting? "It depends on how you handle it," said David Smith, dean of education at the University of Florida. Speaking at a contract administration seminar sponsored by AASA's National Academy for School Executives, Smith said that taping, "handled too formally," could inhibit the discussion.

The advantage to taping an informal discussion is that it captures the tenor of the employee's complaint. "Three weeks later, the angry grievant may remember the conversation as much more rational than it was," Smith said.

Note: The meeting should not be taped without the employee's knowledge and consent.

The Participants

In the Montgomery County (Md.) Public Schools, only the employee and the supervisor attend the informal meeting to air a grievance. The district permits, but does not encourage, employees to bring the union representative to the first formal meeting with the principal. The representative usually does not attend. The union must forward all appeals past the first formal meeting, but its representative is not the spokesperson until arbitration.

One advantage of having the union representative present at the informal meeting is that he or she may be able to calm an angry employee and con-

vince the grievant to accept a compromise. Conversely, the union representative may disrupt the proceeding with objections and threats.

The Grievance Form

A standardized grievance form offers many advantages. It gives uniform information that can be used in comparing and contrasting grievances. More importantly, it assists supervisors in getting all the important information.

The form should ask for:

- The name of the grievant.
- The date of the event that prompted the grievance.
- The specific contract clause that was allegedly violated.
- A description of the violation.
- The remedy requested.
- The grievant's signature.
- The date of the signature.
- The date of the informal discussion.

All grievants should specify a remedy. In the Brevard County (Fla.) Public Schools, principals are instructed to address only the remedy requested. Any negotiations regarding a remedy are handled at step three by the director of employee relations. "Arbitrators will deal with the validity of the remedy as well as the grievance itself," notes the Brevard County contract administration manual.

Brevard County employees are permitted to file only one grievance per form. If a particular event involves violations of three contract clauses, the employee must file three grievance forms. "I want to deal in arbitration with one allegation at a time," explained the district's Bob Barrett. Without such a limitation, he said, unions can dump several contract clauses together "that may not even relate to each other."

The Administrator's Response

The most important response to a grievance is that given at the first level by the principal, Lifton said. Principals should not have carte blanche at this level, he added, because of the danger of each principal giving a different response to similar grievances — which can give rise to charges of arbitrariness and discrimination.

What should happen is this, according to Lifton: At the first glimmer of a grievance, the principal should be required to involve someone higher in the school hierarchy.

After the facts are in, a judgment should be made by the superintendent or a designee about whether the district will fight the grievance. The district should bring in whatever consultant help it may need to draft a response to the grievance while it is still at the level of the principal. "This is where any defenses that are available, particularly procedural defenses, should be enunciated," Lifton said. If they are not, they will probably be held to have been waived.

The response can be prepared for the principal's signature, but it does not have to be the principal's work, Lifton said. If the grievance is carried to another level, the district can stand by the response it made at the principal's level.

Timing the Response

Administrators must carefully observe time limits in responding to a grievance. If the answer is not delivered within the proper time, most contracts provide that the grievance will move to the next level.

There are also hazards in replying too promptly to a grievance, according to Marc Gaswirth, Garry Whalen and Cathleen Otto. In *Administering the Negotiated Agreement*, a publication of the New Jersey School Boards Association, the trio point out:

Complaint Procedure: Don't Be Without One

Some school districts provide an administrative complaint procedure to handle employee gripes that do not relate to the contract. The procedure usually ends with the superintendent or the board of education. Although not mentioned in the contract, it may have similar steps as the contractually approved grievance procedure.

Experts recommend that all districts have a complaint procedure. It can forestall the development of a union. If a union is already present, the complaint procedure can short-circuit demands to broaden the definition of grievance by including board policies and administrative practices and procedures.

"No employee with a grievance will be able to judge a decision fairly and reasonably until his temperature has returned to normal." In addition to waiting for tempers to cool, a delay indicates that the supervisor has given the matter thoughtful consideration. When a supervisor gives a favorable decision quickly, the employee may conclude that the administrator agreed all along and only had to be pushed. The handbook notes that a too-quick response can invite more grievances, and a firm stand by the same administrator in the future may lack credibility.

Should the school board hear grievances? In some districts that do not permit grievance arbitration, the school board hears the final appeal. In the opinion of negotiators interviewed for this report, this is a bad idea.

"The board should not have to have expertise in contract administration, knowledge of arbitration cases, contract law and the history of negotiations," said Frank Forbes of the National School Labor Relations Service. "I don't think you want board members put in that position." On a major grievance, the deputy or associate superintendent for employee relations would be communicating with the board members for their comments, he added.

Directors of employee relations for two large districts agreed with Forbes that responsibility for grievances should be delegated by the board to the superintendent, who may in turn delegate it to a staff member with expertise in labor relations.

"I would come down very strongly on the side of the board not ever being involved in grievance appeals," Fred Lifton said. "It's a lose-lose position for the board. The only reason to go to the board from the union point of view is that it provides a different kind of forum — a political arena — than is otherwise available. And it puts the board in the position of passing on its own agents.

"The board can always convey its judgment to the superintendent in a private way, and this should be done as soon as possible after a grievance is filed," Lifton noted. This means that the superintendent or a designee should be the last level of appeal, in Lifton's opinion.

Note: In some districts in which grievances can be appealed to the board of education, two kinds of bargains may be struck: The district and the union may decide on a compromise settlement, or the board may reverse the administration in exchange for a concession at the bargaining table. Trading a grievance award for something at the table is inadvisable, Forbes said. "Contract administration ought to be a cooperative effort to administer the contract. There should be an understanding that neither side tries to 'win' through contract administration." Grievance settlements do get bargained, he concluded, "but that's different from trading a grievance arbitration for something at the table."

Keeping Track

Records of grievances should be kept by the central office to guide future negotiations and future employee relations training. The grievances should be analyzed to spot trends.

The central office or contract administrator should keep track of information such as:

- The contract clauses most frequently cited.
- The types of employees most likely to grieve or the school site where grievances originate.
- Disposition of grievances: how many are settled at level one; how many go to arbitration.

What if a large number of grievances come from a single school? One possible answer: All of the active union members in the district may be concentrated there. A large number of legitimate grievances, however, could signal a morale problem. Remedial steps are required if an investigation reveals, for example, that a principal is being vindictive, is not following the transfer procedures or is doing a poor job of evaluation.

While districts should be careful not to judge administrators by the number of grievances filed, an excessive number should be viewed as a red flag.

Arbitration

Relatively few grievances are carried all the way to arbitration. As noted earlier, only one-fifth of the districts responding to the **Critical Issues Survey** had one or more arbitration cases during their last contract with teachers. A primary reason for the low incidence is cost. The bill for each grievance case totals from $1,200 to $3,000, according to one estimate. "The union cannot afford to file very many," an administrator noted. Cost is also a consideration for the district. Although the union decides whether to proceed to arbitration, the district is free to reconsider its denial of a grievance when it is clear an arbitration case is imminent.

Administering the Negotiated Contract lists the pros and cons of avoiding or pursuing arbitration. Districts should *avoid* arbitration, the booklet says, when:

- The cost of arbitration — including attorney and arbitrator fees and administrative time

spent preparing and testifying — far outweighs the cost of settling the grievance on the employee's terms.

- A victory for the employee may have an expensive districtwide impact, while voluntary settlement may limit its effect to one case under dispute. Voluntary settlements, like offers of compromise, are less likely to set a precedent than an arbitrator's award, and they usually receive less publicity.
- Settlement of a grievance can be traded for an amendment to contract language to eliminate the ambiguity that led to the grievance and to protect the interests of management in the future.

Districts may decide to *pursue* arbitration when:

- The board's case is substantially stronger than the union's case.
- The adverse effect of a reversal on administrator morale would outweigh the financial cost of arbitration.
- A settlement is likely to encourage the union to threaten arbitration on every grievance.

Note: The board should be open to compromise, even after a decision is made to pursue arbitration. Unless the board gives its representative "clear instructions" on whether to accept a compromise, the district may miss a chance to settle for 25 percent of the cost, lose the arbitration and be liable for 100 percent payment, according to *Administering the Negotiated Contract.*

Is the Grievance Arbitrable?

One of the key considerations in a district's decision to pursue arbitration is whether the grievance is a proper subject of arbitration. Two criteria are used: procedural and substantive arbitrability.

Procedural arbitrability: An arbitration award may be denied on two procedural grounds: (1) if the grievance is not filed or appealed within the time limits allowed by the contract or (2) if certain steps are not followed. The grievant, for example, may attempt to "skip a step."

Caution: "If you do not raise the procedural question at the earliest practical step, you may waive your right to later raise the question," Forbes said. The timeliness issue, he advised, should be raised at the *first written step.* If timeliness is not raised until arbitration, the district will lose that point "in virtually every case," he noted. That

Do's and Don'ts on Grievances

To avoid grievances . . .

- Keep open lines of communication with employees; express willingness to hear problems.
- Don't change policies and procedures that affect employees without consulting them — even if not required to do so by the contract.
- Be consistent.
- Know the contract and follow it strictly, but do not be afraid to exercise management rights on matters outside the contract.
- Get to know the union representative as a person.
- Keep promises to employees.
- Personalize good things and depersonalize bad things.
- Treat employees with respect. Reprimand an employee in private, never in front of peers.

After a grievance is filed . . .

- Listen carefully. Try to see the issue from the employee's point of view.
- Investigate a grievance thoroughly.
- Don't be drawn into an argument.
- Ask the grievant to specify the specific contract clause that has been violated and the remedy requested.
- Seek facts from witnesses, not opinions.
- Keep records of informal and formal interviews, any subsequent investigation and steps taken to resolve a grievance.
- Be willing to admit a mistake.
- Give the union representative an opportunity to retreat gracefully from a position when all the facts of a situation are in.
- Observe time limits specified for appeals.
- Raise the timeliness issue at the first formal level, if the employee has not filed the grievance within the time limits.
- Don't negotiate by grievance.
- Give the employee the dignity of a full hearing, even on a non-contract issue. Make clear that the matter is not being handled as a grievance.

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doesn't mean that the principal cannot solve the problem or make an offer of restitution, Forbes added. The principal can say, "Even though we hold this not to be timely, I propose . . ." By doing so, management has protected its position if the union rejects the compromise and appeals.

Setting precedent: The timeliness issue is more important to the individual case, Forbes said, but administrators must also be wary of setting precedent. "If you establish a practice, over time, of ignoring time limits, you have, by your contract administration, potentially rewritten the contract," Forbes noted. "It's more difficult to recapture the limits in the contract. It can be done, but it's more difficult."

Substantive arbitrability: A grievance is not arbitrable if it is (1) outside the scope of negotiations or (2) beyond the scope of the contract.

1. Negotiability: In some states, the collective bargaining law and decisions by public employee relations boards have clearly defined what topics are mandatory, permissive and prohibited subjects of bargaining. What is arbitrable is determined by the language of the agreement itself. As long as something is in the contract, it is going to be grievable, and therefore arbitrable. An exception to that general rule is found in about six states, including Illinois, according to Fred Lifton. These states have a doctrine which says there are certain functions of a board of education so fundamental to the legislative responsibility of the board that it cannot abandon or delegate its responsibility, for example, to an arbitrator. The board must exercise its responsibility in these functions. An example is the board's responsibility in determing whether or not a teacher should be granted tenure.

2. Contract limits: Just as the definition of a grievance limits what can be grieved, collective bargaining agreements can limit which grievances can be carried to arbitration. Other contract clauses may also affect the question of arbitrability. The National School Labor Relations Service advises districts to avoid past practice or maintenance of standards clauses "almost at any cost" because of their possible effect on grievances. "We don't know what they could mean in terms of grievances," Forbes said.

Note: The primary criterion arbitrators use to evaluate grievances is the express language of the contract provision being grieved. The arbitrator generally looks beyond the contract to past practice and negotiations history only when the language itself or the application of the language is vague.

Selecting the Arbitrator

Several agencies provide lists of arbitrators for school districts and employee unions. The American Arbitration Association and the Federal Mediation and Conciliation Service serve public and private employers across the country.

In addition, some states have established their own agencies. For example, the Massachusetts Board of Conciliation and Arbitration and the New Jersey Public Employment Relations Commission provide arbitrator lists to management and employee groups. The agency sends management and the union a list of arbitrators from which to choose.

The easiest way to choose an arbitrator is to find someone in the area who does a lot of grievance arbitration work and ask that person about arbitrators. Two other sources of information can be used by districts in selecting an arbitrator: the arbitrator's resume and past awards.

The resume typically contains biographical information and a brief synopsis of the individual's arbitration experience, based on information provided by the arbitrator.

Most arbitrators are either attorneys or college professors. Some have been associated with government agencies. In reviewing the resume, a district should note whether the arbitrator has handled cases in the public sector and has heard a case on the particular topic at issue. Another important criterion is the amount of experience with arbitration.

A district probably can better evaluate an arbitrator by the individual's record of past awards, but copies may be difficult to obtain. Not all awards are published. Awards by arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service are published only if both parties in a case agree to publication. Some states make all arbitration awards public. In those states, the agency charged with administering the collective bargaining law should have copies of the awards on file.

Frank Forbes recommends checking at least two sources for arbitration awards of the individuals being considered as arbitrators: the (state) Public Employee Relations Board or Commission and a subscription service offering summaries or complete texts of awards.

One starting place: *Arbitration in the Schools*, a monthly summary of arbitration awards published by the American Arbitration Association. A more extensive search of past arbitration awards is found in *Labor Relations Press*, which publishes awards

from several states and also indexes the awards published by other services.

Note: Researching arbitration awards can be costly. With the exception of the state public employee relations boards, all sources publishing awards are private and most are for-profit. Some possible sources for labor relations publications: college libraries, the state library or the library of the state education agency.

Analyzing the awards: Experts caution against rating arbitrators strictly by "wins" and "losses." An arbitrator may rule against a school district on a grievance arbitration because management was poorly prepared or because the district had poor contract language, neither of which may be applicable to another case. In addition, it is difficult to characterize arbitrators as strictly "pro-management" or "pro-labor." For one thing, any arbitrator who consistently backs the same side will soon be out of work.

Awards can be analyzed according to an arbitrator's skill: Do the arguments appear to be well reasoned or haphazard? Is the arbitrator well versed in state law? They can also be analyzed for the philosophical bent of the individual: Does the arbitrator have a legalistic or a problem-solving approach? Does he or she support the "just cause" or "equity" standards in discipline cases?

The goal is to find an arbitrator who matches the strengths of the particular case, Forbes said. If the details of a teacher dismissal case satisfy just cause standards, for example, the district would want to select an arbitrator who typically applied these standards in dismissal cases. Conversely, if the dismissal was handled fairly and equitably, but failed to address one of the just cause criteria, the district would want an arbitrator who uses the equity standard.

Keep in mind: The union is doing the same type of analysis of arbitrators and may reject an arbitrator who would seem to favor the district viewpoint.

Note: Several things that are critical in selecting an arbitrator cannot be determined by reading an award: Did the arbitrator conduct a fair hearing, and did the arbitrator really understand the issue?

The District Representative

Districts with a professional staff member handling employee relations may rely on this administrator in an arbitration hearing. Others may want outside assistance. In Florida, for example, the question has been raised whether presenting an arbitration case is the practice of law. To be safe, the Brevard County Public Schools use an outside attorney to present its case, but the district's Bob Barrett does much of the background preparation.

As in the case of selecting the negotiator, a district must consider local circumstances and the ramifications of the case in deciding whether to have outside help on arbitration.

The Arbitration Process

Arbitration hearings are generally less formal than a court hearing, but this varies with individual arbitrators. Generally speaking, the rules of evidence are not as rigid as in a court of law. There are four steps in the arbitration process: setting the hearing date, the hearing, post-hearing briefs and the decision.

Step 1: Setting the hearing date. The date, time and place may be set by the arbitrator dealing directly with the two parties or by the agency furnishing the arbitrator. District administrators have a great deal of control over the date, time and place. All must be acceptable. Note, however, if a hearing is scheduled on school time, those involved in the arbitration will have to be excused from school. On the other hand, the arbitrator may not like to hold a hearing that starts at, say, 4 p.m.

Step 2: The hearing: The hearing is conducted in three stages: the opening statement, presentation of exhibits and closing arguments. The union, as the side bringing the grievance, makes the first opening statement. The district follows with its opening statement. (The order is reversed in a discipline case.) Each side may submit its statement in writing with a copy for the opposition. Opening statements are intended as an overview: they briefly describe what each side will attempt to prove.

Witnesses. Evidence is primarily submitted through the testimony of witnesses. They are expected to state only the facts they know to be true, not hearsay and not opinions. Experts advise that witnesses should be prepared in advance on what to expect during a hearing. A nervous or uncertain witness will lack credibility. The district's representative should ask open-ended questions that allow witnesses to tell their story with little interruption.

Cross-examination. After a witness has testified, the advocate for the union will try to discredit the testimony through cross-examination. Taken together, the statements either contradict or cast doubt on the validity of the testimony. The advocate may also try to anger or fluster the witness. The best defense

is a dry run in advance of the proceeding so witnesses will know what to expect.

Closing statements. In the closing statement, the district advocate summarizes the main points of the district case and stresses the weaknesses in the union argument. The advocate may also refer to points made in the opening statement of the district. (Note: some advocates bypass closing statements when they intend to file a post-hearing brief.)

Step 3: Post-hearing briefs. In the brief, the representative of management puts the case in perspective and elaborates on the arguments. The arbitrator usually sets a deadline for receipt of the briefs, which officially "closes" the hearing.

Step 4: The decision. Within a prescribed period of time, the arbitrator will send both sides a copy of the award, usually supplemented by a written opinion giving the reasons for the decision. If the arbitration is advisory, the board must decide whether to accept or reject the decision. The disadvantage of rejecting a decision in favor of the union is that it ceates pressure for the union to demand binding grievance arbitration in the next round. If both parties have agreed in advance that the arbitrator's decision is binding, the process ends.

Note: There is another alternative available to advisory arbitration. If the decision is adverse to the union, or if it is favorable to the union and the board doesn't accept it, the union almost always has the right to go to court. The process does not simply end with advisory arbitration.

Important: Some regional differences may be found in handling arbitration. District officials should check with informed sources within their state.

Note: Information on the arbitration process was prepared with assistance from *Special Report on Impasse* by Wayne Blanton, Copyright 1978, Florida School Labor Relations Service, Inc.; and *Administering the Negotiated Agreement* by Gaswirth, Whalen and Otto, Copyright 1980, New Jersey School Boards Association.

Regional Bargaining: A Trend To Watch

Efforts by teacher unions to form regional or coordinated bargaining councils is a new trend of special interest to administrators and boards.

In 1980, activity was concentrated primarily in three states: Michigan, Oregon and California. Experts interviewed for this report predicted that the trend will spread to other states, but the spread is likely to be slow.

Here's how coordinated bargaining works: Teachers from several neighboring school districts select representatives to a regional or coordinating council. The council determines minimum bargaining objectives. Contracts must be reviewed by the bargaining council before being ratified by the teachers. The council then tries to orchestrate settlements. If the districts in which teachers have the strongest contracts ratify first, a precedent is set for teachers in other districts in the region. They can use the strong contracts to "whipsaw" their school boards.

The regional bargaining council can also order teacher negotiators to stall during negotiations or refuse to vote on a tentative contract so all teachers can stage a coordinated strike on behalf of their colleagues in a weaker bargaining position.

School boards and management negotiators oppose coordinated bargaining for these reasons:

- It upsets the balance of power, especially in small districts. The threat of strike is muted sometimes by the realization that the board can hire enough substitutes to make a strike ineffective. If all teachers in a region strike, the schools are likely to shut down.
- Regional bargaining tends to radicalize the negotiations process because the most active teacher organizers are the ones typically elected to the bargaining councils.
- It leads to loss of local control and flexibility. One goal in Michigan is to negotiate layoff provisions that require districts to give first preference in hiring to teachers laid off in neighboring districts.
- If coordinated bargaining becomes institutionalized, pressure is likely to build to consolidate school districts. At the very least, districts are likely to agree to contract provisions unsuited to the needs of the individual school district.

Management negotiators recommend these strategies to blunt the effectiveness of a coordinated bargaining strategy:

1. Districts in the same area can ratify contracts with different expiration dates so teachers are not negotiating at the same time. Some could negotiate one-year, some two-year and others three-year contracts.

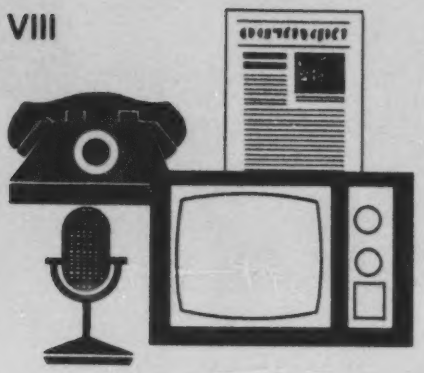
2. District negotiators should meet to compare notes on strategy and bargaining demands. Caution: Such collaboration should be low key because coordination on management's side adds legitimacy to the process.

3. Districts using outside negotiators should resist the temptation to hire the same individual as their neighbors. The Michigan Association of School Boards (MASB), for example, refuses to assign the same negotiator to different districts in the same county. A common union tactic, MASB Assistant Executive Director Harry Bishop explained in an interview, is to present a contract clause negotiated in one district and "invite" the second district to initial it. MASB negotiators refuse because the second district deserves to have language tailored to its specific situation. Providing different negotiators in the same region avoids "psychological entrapment," Bishop concluded.

4. In Oregon, the State Employment Relations Board ruled that regional bargaining councils are legal labor organizations. As a result, some management negotiators have tried "whipsawing in reverse." Drawing on strong contract language won in a neighboring district, management says: "This was good enough for your friends in the council; we'd like to have it in our contract," one Oregon administrator explained.

Conclusion: Although the issue of regional bargaining councils did not figure prominently in the returns to the survey for this report, it is a trend to watch.

Chapter VIII



Communications

A well planned communications program is an essenital ingredient to successful negotiations. Since the public will be paying for the contract settlement, it is entitled to know the issues at stake. If negotiations heat up and a strike threatens, moreover, the school district must be prepared to counter emotional charges from the employee union and communicate logical positions based on facts.

School public relations professionals consulted for this report say strikes and near-strikes are won or lost in the public arena. They say teachers are less likely to walk a picket line if they think the public is opposed to their position. They also say the union can be counted on to deluge its membership and the public with accusations, innuendos and distortions of the district's position.

The best defense for a school district is credibility in the community. This credibility cannot be built in the weeks or months prior to negotiations. It must be earned, instead, by the year-round practice of being open with the media and keeping the public informed.

Preparing for Bargaining

An important element of an effective collective bargaining effort is a year-round communications program. If a district anticipates a financial crunch, for example, its newletter and press releases should carry articles explaining the budget months before bargaining begins.

While the district newsletter and releases provide a vehicle for informing the general public, periodic financial reports can be prepared for district employees. Ann Barkelew, public information officer for the Los Angeles County Office of Education, explained in an interview for this report that several Los Angeles County districts prepare simplified monthly financial reports for the school board and send copies to each employee. A one-page sheet breaks down income and expenditures by major categories. If a catch-all "other" category is used, it should be explained in a footnote. Unless an explanation is included, the district may be accused of hiding money that could be used for salaries.

The monthly report shows employees what proportion of the budget goes for salaries and how much less, proportionately, is being spent for items such as curriculum. When monthly reports are instituted, Barkelew said, "accusations that the district is hiding money begin to evaporate."

Communications Tip #1: Explain the Process

When a district begins bargaining for the first time, the bargaining process should be explained to the public and to the reporters who cover the district. Reporters, as a general rule, are not knowledgeable about collective bargaining, which results in poor reporting of both sides, said Dave Dickson, director of communications for the Jefferson County (Colo.) Public Schools, in an interview for this report. Dickson, formerly director of communications for the Oregon School Boards Association, advocates separate meetings to orient the public and the media about bargaining.

The public meeting should be repeated each year, according to Dickson. The speaker should explain the collective bargaining process, the terms that will be used and probable timelines. Bargaining issues can be discussed in general terms without tipping management's hand. For example, the speaker can say the team will be discussing salaries and fringe benefits, including dental insurance, the sick leave policy and sabbaticals.

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The media briefing would cover the same topics plus the fundamentals of bargaining.

"Very rarely should a district go public during negotiations," cautions Chicago lawyer Fred Lifton, unless a major change in the contract is expected or a strike is anticipated.

The terms of a tentative agreement should not be released before full ratification by both sides. Otherwise, press play may destroy an agreement.

Communications Tip #2: Select a Spokesperson

Who should speak for the district on negotiations? Lifton advises that the chief elected official (the school board president) should be the spokesperson for the district if a strike is anticipated. During a strike, he added, the superintendent or a designee should be the spokesperson on matters concerning the day-to-day operation of schools.

Other experts consulted for this report offered a variety of answers, but they agreed on one thing: *One* individual should be designated as spokesperson, and the decision should be made well before a crisis hits.

The following criteria can be used in selecting a spokesperson:

- The person should have credibility with the media and the public.
- The person should have ready access to bargaining information — either as a member of the team or through regular briefings.
- The person should be knowledgeable about the dynamics of negotiating to preclude saying too much or the wrong thing at the wrong time.

General guideline: Local circumstances should guide the selection of a spokesperson. The choice should be made with due consideration for items such as the community's attitude toward the schools and collective bargaining, the operating style of the superintendent and school board, and the talents of the persons available.

The chief negotiator as spokesperson: The person with direct responsibility for negotiations is often the most knowledgeable and best equipped to speak for the distrtict, some experts advise.

An advantage of using the chief negotiator as spokesperson is that he or she will know how much can be said without revealing negotiating strategy or foreclosing future compromise.

Disadvantages: One disadvantage is that the negotiator may not know how to work with the media, nor have the time to do so. Another potential problem is that the use of an outside negotiator as spokesperson calls attention to the fact that the district is paying a consultant, which may generate criticism in the community.

What's an appropriate response to such criticism? Barkelew advises districts to stress that negotiating is a complex skill and that school board members and superintendents generally have neither the training nor the experience to represent the district well.

Note: In a district in which the chief negotiator is the usual spokesperson, Barkelew advises, the public relations professional should be free to speak for the district during a strike. Why? "The negotiator will be too busy to return calls, and reporters will go where they can get an answer," Barkelew said. The union will always provide a spokesperson, and the district must do the same thing so that its position is made clear.

The superintendent as spokesperson: Howard F. Horner, superintendent for the 6,500-student David Douglas School District in suburban Portland, Oreg., advised that the spokesperson should be the superintendent or the superintendent's designee. "The reporter wants information and, in a crisis, he or she will want that information from the head person," Horner said in an interview for this report. Horner, who is spokesperson for his district, does not serve on the negotiating team or attend sessions, but he is briefed after each session.

Caution: Using the superintendent or a board member as the district's spokesperson could create harmful side effects during a strike. The spokesperson could easily become the target of hostility. Thus, the superintendent's ability to work with staff after the strike could be seriously impaired. Or, if a board member became the spokesperson, disgruntled employees could turn board meetings into a forum for their gripes following a strike.

Communications Tip #3: Resist 'Baited Hooks'

To avoid generating hostility, Supt. Horner said he responds indirectly to questions regarding the

specifics of negotiations — questions he regards as "baited hooks." During a 1978 strike in his district, for example, Horner stressed these facts in media interviews: the schools were operating smoothly; the substitutes were competent, certificated teachers; the board was willing to meet at any time with the other side; and a fair and just settlement was anticipated.

Communications Tip #4: Talk on Your Own Turf

During a strike, the spokesperson must be careful that the location of an interview with a reporter does not compromise the message being communicated. A reporter may want to conduct an interview in front of picketing teachers or at union headquarters, Supt. Horner said. But, he cautioned, the spokesperson must be in or near the school district if the district message is to come across.

Communications Tip #5: Making Proposals Public

When should a school district make its proposal public? That depends on state law and school district philosophy. In some states, a "sunshine law" requires that the first negotiating session or all sessions be open to the press and the public. In those states, proposals by both sides become public at the first meeting.

In states not governed by sunshine laws, the release of information will be affected by the ground rules adopted at the negotiating table. Often, the two sides will adopt a "gag rule" that prohibits either side from talking to the press.

Communications Tip #6: Involving the Public

District involvement of citizens in collective bargaining was notable by its absence in district reponses to the **Critical Issues Survey** for this report. Only a handful of respondents reported citizen involvement as one of the top three employee relations problems they would face in the next 10 years.

Another question in the survey for this report asked if citizens were directly involved in collective bargaining. Most respondents said "no." Many from sunshine bargaining states said negotiating sessions were open to members of the public, but few attended. One district reported that it had a member of a citizen budget advisory committee on its negotiating team. A spokesperson from that district said the citizen member — always someone from the business community — provided a valuable perspective. The spokesperson also noted that the citizen member added "weight" to the team because — unlike school board members — the citizen member did not have to worry about being reelected.

Another idea for districts that want to encourage public involvement in collective bargaining is to hold a public meeting well before bargaining begins to receive suggestions from citizens regarding district proposals.

Communications Tip #7: Keeping Everyone Informed

Some districts publish a bargaining bulletin or newsletter after each negotiating session. The publication can be sent to all employees or just to the employees of the unit involved.

Bargaining updates also can be provided in regular employee newsletters. Such an ongoing communications effort puts into perspective those issues over which the two sides disagree, Ann Barkelew of the Los Angeles County Office of Education advised. "Most districts don't do anything to let people know all the things that are being bargained all year long," she said. "They don't realize there are already 20 to 30 things on which there is tentative agreement."

Supt. Horner of Oregon's David Douglas School District suggested that the content of bargaining updates in newsletters to employees and the community should be kept general.The update on the first bargaining session, for example, might list the main topics under discussion and note that both sides are working toward a fair and just settlement. A subsequent article might list the items on which tentative

agreement has been reached.

Articles should include specific proposals, Horner advised, only if a strike is imminent. Such articles should run in the community newsletter, not the employee newsletter, he said. Otherwise, the district might be accused of an unfair labor practice, i.e., trying to influence union members and to circumvent the union's legally elected representatives.

Communications Tip #8: Work with Key Communicators

The David Douglas School District provides pertinent information about its schools to a group of 200 influential community members or key communicators. They are actively interested in school matters and are respected by their peers.

All district communications (newsletters, board agendas, news releases) are mailed to key communicators. Their names are listed by elementary attendance areas, and principals are encouraged to communicate with them by telephone and face-to-face.

The steady stream of factual information and personal contacts builds a trust relationship between the key communicators and the district, Supt. Horner said. Besides being a good source of public relations year round, the communicators become valuable allies in time of crisis. To illustrate, Horner told of a teacher strike in the district in 1978. When the teachers gave 10 days' notice of an impending strike, as required by Oregon law, district principals set up meetings with key communicators. Horner and the deputy superintendent made presentations at each meeting, giving facts in the dispute and offering data to verify the information. The key communicators were given fact sheets to use in explaining the strike issues to their friends and colleagues.

After the strike began, out-of-town union operatives spread rumors that the schools were a shambles and that substitutes were inept, Horner said. To counter the rumors, principals invited the key communicators to visit the schools. Those who visited were able to authoritatively quash the rumors.

Communications Tip #9: Don't Forget Principals

Middle management — principals, assistant principals and central office administrators — must be kept abreast of developments in negotiations. They can provide feedback to the negotiations team on proposals that could cause problems at the building level. In addition, informed principals can clarify management's negotiating stance at the building level.

In some districts, middle managers are briefed verbally at administrative staff meetings; in others, memos are distributed summarizing each session. A third option is to circulate confidential copies of negotiations minutes.

Districts which include one or more principals on their negotiating team should provide a means for these team members to communicate with their

Rehearse Head Counts Before a Strike

If a district decides to close schools during a strike, its primary ammunition is solid data on the daily attendance of students and teachers. "Getting that information, however, is the biggest hang-up in any strike situation," said Ann Barkelew of Los Angeles County.

Barkelew recommends that districts rehearse the data gathering well in advance of any job action. Principals can be asked to advise the central office on how many students are in school by 10 a.m. Districts administrators can then watch to see what problems develop in gathering the information.

In a strike, Barkelew continued, the teachers will claim to have every teacher on the picket line. The district can dispute that claim, she said, by publicizing how many students, teachers and other employees are in attendance at each school.

peers, experts advise.

If the district anticipates a strike, principals will need training in strike communications. The district should provide guidelines for working with the media. Some districts, for example, have principals ask visiting reporters to check in with the district communications center. Districts often advise principals not to comment on the issues being negotiated. Any information they provide on what is happening at their own schools, such as the number of students and employees in attendance during a strike, should be consistent with that provided by the central office or strike communications center.

Communications Tip #10: Explain Impasse

When negotiations break down, communications becomes absolutely critical. Experts advise districts to include the following information in their newsletters and press releases: an explanation of the issues, the reason for impasse and details on the board's position. The same information may be included in a letter to parents from the school board.

If mediation fails and a fact-finder is called in, the district should explain the mechanics of the process to the press and the public. For example, state law may permit the fact-finder to limit review to certain issues. In some states, both sides must accept the fact-finder's report totally, or there is no agreement. "The public needs to understand that," Dickson stressed. He encourages districts to hold a news briefing when the fact-finder's report is released. A district representative should review the report point by point and have copies of the previous contract available for comparison.

Communications During a Strike

Should schools be kept open during a strike? This is a question to be answered by each school district. Fred Lifton advises schools to close. He believes that the problems encountered in trying to keep schools open are 10 to 20 times greater than if they are closed. And, in a long strike, a district can always decide to reopen schools, provided it has sufficient personnel to do so. Lifton also said that post-strike strife is lessened by not attempting to keep schools open.

Other experts believe that schools should be kept open. At any rate, most districts will have some inkling of a strike months in advance. Teachers may begin filing a large number of grievances, or tensions may be unusually high because of an impending reduction in force.

Let the Sunshine In?

Negotiations experts disagree about the desirability of negotiating in public. Here are veiws on both sides of the issue:

Pro: "I'm an advocate of sunshine in the public arena because so many important issues take place at the bargaining table," said Marcus Johnston, executive director of the Florida School Labor Relations Service, in an interview for this report. "The public has the right to know, and public management has the right to inform," Johnston added.

In Florida, management has used sunshine bargaining to greater advantage than the unions, Johnston contended. He believes that bargaining in the sunshine places greater constraints on the union because excessive demands make it look greedy or ridiculous. In the glare of publicity, management is more likely to come out looking reasonable, he said.

Con: "Sunshine bargaining fosters a subterfuge," Jeff Austin, chief negotiator for Baltimore, told a collective bargaining seminar sponsored by AASA's National Academy for School Executives. "Real bargaining takes place between a couple of key people who go back and sell it to each side." He believes that "while sunshine bargaining can be done, it takes a lot longer."

Austin, who bargains with Baltimore teachers as well as with all other city employees, contends that the verbal excesses common to closed sessions serve a useful purpose. The union negotiator's ability to "tell management off" in a closed session provides all union members with a "vicarious catharsis," he explained.

With sunshine bargaining, Austin said "you may reach agreement, but you will not clear the air."

First Steps

Once teachers begin talking about the possibility

of a strike, the district should prepare a newsletter to the community and a news release highlighting the district's position on the issues. Some districts will want to point out that a strike plan is being prepared. Dave Dickson cautions, however, that the district's position must be: "They're talking strike, we're talking negotiations."

Letters

Once the strike notice is delivered, Dickson advises, the district should send out four letters:

1. A letter to parents and students explaining how the district will operate if a strike occurs. The letter also can list school board members' home telephone numbers. "At this stage," Dickson says, "most calls will be supportive, but board members may need unlisted numbers later."
2. A letter to members of the bargaining unit explaining the likely consequences of a strike in terms of lost pay and the possibility of being replaced. The letter should invite employees to return to work and explain any procedures for doing so.
3. A letter to the news media listing district representatives and their day and night telephone numbers.
4. A letter to members of other bargaining units, reminding them of the language in their contract about honoring another unit's picketing line.

News Conferences

A district should plan in advance how it will communicate with the media during a strike. Will a daily news conference be scheduled? One advantage, mentioned in the *Strike Manual* of the Association of California School Administrators (ACSA): A news conference will save some time by giving many reporters the same information at the same time.

A disadvantage: If the spokesperson cannot handle rapid-fire questions gracefully and with accuracy, a news conference should not be planned.

ACSA also cautions districts that news conferences should not be scheduled so early in the day that essential information, such as daily attendance, is not available. Note, too, that a daily news conference does not absolve the district of responsibility to respond to questions from reporters throughout the day. If they cannot get answers from the district, they will turn to the union.

The district spokesperson should not adopt a "no comment" stance to all questions at a news conference. Every charge by the union does not require a response, but it is a mistake to refuse to give the district's side on most issues.

Basics of news releases: Releases issued during a strike should be numbered, dated and include the time of day to avoid confusion about which release is the most current. Copies should be provided to board members and members of the management team, as well as to media representatives.

A district should prepare media packets and have them available, along with news releases, for distribution to reporters and other media representatives at news conferences, in the strike communications center and in answer to telephone inquiries. The packets should contain background information about district enrollment, the number of employees and buildings, and the bargaining issues.

Advertisements

Some districts explain their position to the public in newspaper ads or on radio and television. In one Oregon district, a newspaper averted a strike one-half hour before it was to begin. The ad was entitled "Is Our School Board Unfair?" It detailed the board's offer in terms of representative steps on the salary schedule compared with the 20 largest districts in the state. The ad was successful because it made teachers aware of the board's last offer. (Interviews for this report with collective bargaining veterans indicate that unions can be slow to notify members of new offers.)

Ads can be paid for by the district or by a group of "concerned citizens." This avoids using district funds and shows that many people are behind the school board's position. Such an ad can offset any publicity from pro-teacher "concerned citizens," who are usually spouses of teachers.

Caution: Ads describing the board's position should be carefully and generally worded. If, for example, the ad says the board will not compromise on something and it ultimately does, the district's credibility could be seriously wounded.

Other Communications

The district communications office may need to prepare fact sheets for parents and other citizens giving specifics on offers to counter misinformation or confusion generated by the union. A question-and-answer sheet should be prepared for administrators, supplying information about the questions they

are most likely to be asked. The management team should confer daily during a strike to exchange information from the front lines and about any developments in negotiations.

The Communications Center

Central to any strike plan in a medium to large school district is a communications center — a room that serves as a clearinghouse for all information necessary for decision making. One or more persons sit by specially installed telephones to receive class counts from each school. The number of students, teachers and substitutes on hand are tallied on butcher paper or a blackboard, and these figures are compared with normal attendance.

Basics of Communications In Collective Bargaining

- ✔ Use plain English in communicating with the public. Avoid jargon when discussing the issues.
- ✔ Publish bargaining bulletins promptly after a negotiations session, ahead of the union's version of the events.
- ✔ Let teachers and the public know how often the teams are meeting. Regular articles about the negotiations process will discredit union charges, such as "the board will not negotiate with us."
- ✔ Check with the district negotiator before releasing information about negotiations.

During a Strike. . .

- ✔ Don't lambaste individuals, no matter what they say about the superintendent or board members.
- ✔ Be professional in all public statements. Avoid emotional, unprofessional displays.
- ✔ Tell the truth.
- ✔ Do not send letters home to parents through the students.
- ✔ Carefully plan any public appearances by board members. Cancel a board meeting if it appears the union will turn the proceedings into a circus. If board members are divided on negotiating issues, a meeting might serve to dramatize the differences.

Most communications experts consulted for this report recommended that tables, typewriters and telephones be installed for reporters inside the center. A few, however, suggested that the district may want to house the reporters in a separate room nearby. The *Strike Manual* of the Association of California School Administrators counsels that reporters be excluded from the communications center if their presence would slow down operations.

Using Outside Experts

A district may want to consider bringing in a school public relations expert with strike experience. Such professionals are sometimes available at no cost (except for expenses) through a state school boards association, state school administrators association or country office of education.

Another source is the National School Public Relations Association (NSPRA), 1801 N. Moore St., Arlington, Va. 22209. It established in 1980 a Crisis Response Task Force containing the names of professional communicators with experience in various school problems, including negotiations/strikes and news media relations.

Educators wishing consultant help may call NSPRA Executive Director John Wherry at (703) 528-5840. Wherry or his designee will give the caller several names. All arrangements are made between the person calling and the consultant. NSPRA does not certify the expertise of those listed.

After the Strike

Details of the agreement should not be released until both sides have ratified it. Dave Dickson cautions against making deals with the union guaranteeing that management will not comment on the terms of the agreement. There is no way to ensure that the union will refrain itself, he explained.

When a settlement is reached after a strike, the union will often suggest that the two sides issue a joint news release. If joint releases have been the practice in the past, the district probably should continue it. Otherwise, the district should issue its own release. Communications experts advise districts to use "healing language" in the release, such as "the settlement was just and equitable."

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Chapter IX

Salaries

The increasing cost of staff salaries ranked as the top concern of the nation's school administrators in two recent **Critical Issues Surveys.** In the survey for this report, pay was the only labor relations issue mentioned by more than half (52 percent) of the respondents. In a 1979 survey for the **AASA Critical Issues Report,** *How Schools Can Save $$: Problems and Solutions,* "increases in staff salaries" ranked number one as the cause of serious budgetary problems in school districts.

Employee salaries greatly concern management because they comprise approximately 70 percent of district budgets. Employees are always interested in their salaries, but this interest is magnified when inflation rates are exceptionally high.

Most negotiators consulted for this report agreed that "money settles most contracts." Teacher money problems were dramatized by the National Education Association in its April-May 1980 *NEA Reporter* with a four-page section entitled "Inflation: Squeezing Teachers Out of the Classroom."

An NEA chart compared average teacher salaries with the cost of living as measured by the Consumer Price Index (CPI) for the period 1970-71 to 1979-80. Teacher salaries for each year were stated in terms of purchasing power in 1970-71 dollars. The chart concluded that teachers have gone from a purchasing power of $9,269 in 1970 to $8,226 in 1980. One negotiator, however, reminds the districts he represents that NEA quotes 1970-71 figures on purchasing power "because that's when it reached its peak."

The NEA newsletter also contained profiles of many long-time teachers who are working two jobs or leaving education because of money problems. In a front-page editorial, moreover, NEA President Willard McGuire said: "The time has come for school boards to stop defaulting on their responsibility to go to the public for additional dollars for public education. Seeking realistic revenue increases to fund legitimate teacher salary improvements takes political courage, but it must be done."

Only six percent of survey respondents reported contract clauses that tied cost-of-living adjustments to the Consumer Price Index (CPI). But school boards can expect teachers to continue to demand adjustments to make up for lost ground. The *NEA Reporter* urged bargaining units to negotiate cost-of-living escalators equal to 100 percent of the Consumer Price Index in subsequent years of multiyear contracts. "In the present economy," said NEA negotiations advisor John Dunlop, "if you can't nail down a cost-of-living adjustment of at least 75 percent of the CPI, a multiyear agreement can be fatal."

NEA also advised bargaining units to:

- Push for escalators tied to increased district revenue or "turnover savings." In other words, savings due to staff turnover would be distributed across the salary schedule. This removes one incentive "for the board to hire inexperienced teachers," NEA noted.
- Get economic reopeners in multiyear contracts.
- Form coalitions with other unionized employees in the district.
- Push for increases in other kinds of compensation, e.g., mileage reimbursement, curriculum work, hourly rates when teachers fill in for other teachers and extra-duty pay.
- Push for new fringe benefits, such as dental, vision and prescription drug insurance and tuition reimbursement for graduate courses.

With the pressures of higher energy costs, declining enrollment and taxpayer resistance to higher levies, boards are finding it increasingly difficult to

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reach agreement with employees, especially teachers. Some boards with little or no money to spare find themselves giving away management prerogatives instead of dollars. Experts strongly advise against this practice, because rights, once forfeited, are exceedingly difficult to win back.

How then do districts reach agreement? In the grand American tradition, adversity is sparking creative answers. Some districts have reduced costs or gained flexibility by modifying or even abolishing salary schedules. Others have been able to reduce the bite of the traditional salary schedule by applying the brakes to such long-standing prerequisites as tuition reimbursement.

Changing the Schedule

The salary schedule is a firmly entrenched mechanism that provides automatic yearly increases to teachers. Increased educational attainment is rewarded by separate lanes on the salary schedule.

While there may have been justification for salary schedules in the past, hard-nosed negotiators say many of the reasons are no longer valid. For example, the reward-for-experience aspect may have been valuable in times of burgeoning enrollment when districts had trouble hiring enough teachers. In times of declining enrollment, however, the problem is lack of turnover. In the growth years, teachers argued that new young teachers on the schedule would balance out the higher paid teachers. This is no longer true. Another factor: female teachers are far less likely to leave the work force when they have children. This reduces turnover even further.

Teachers will resist efforts to abandon salary schedules, but there are ways to make them less onerous. Paul Hetland, a St. Paul, Minn., attorney/negotiator, and others attending an annual meeting of the National Association of Educational Negotiators offered these suggestions:

- **Reduce the number of equivalency lanes.** Some districts have lanes for a BA plus 15 hours and a BA plus 30 hours in between the lanes for bachelor's and master's degrees. Others have a lane that pays the same salary for a BA plus 60 hours as is paid teachers with master's degrees. Hetland called this the lane for "MA failures" -- people who did not make the MA, but who continue to accumulate credits. "If you don't have equivalency lanes," he advised, "set a high priority on not getting them." Eliminating lanes for the BA plus additional credits could be one of the demands management brings to the bargaining table.

- **Make sure credits come from accredited institutions.** "Districts are paying for credits from institutions no one ever heard of," Hetland said. He cautioned against granting "TV credits and credits for going to Howard Johnson's for the weekend." Districts may want to pay for some worthwhile but offbeat courses, but they should be limited to special cases where the superintendent announces in advance that credit will be given.

- **Don't pay for undergraduate credits.**

- **Tighten requirements for movement on the schedule.** Instead of accepting credits for any subject, districts should count only those that relate to what the teacher is teaching.

- **Eliminate tuition reimbursement.** Districts that pay up to 50 percent of tuition are paying teachers twice: once for the course and once through the salary schedule. Hetland said such policies were written when many teachers did not have a bachelor's degree. The lesson here is to review policies frequently.

- **Count increments as raises.** "It is peculiar to the education industry," Hetland said, "that educators may get more money, but they don't call it a raise."

- **Bargain the salary schedule, not the salary budget.** When a teacher retires and a new teacher is hired at a lower rate, the district, not the union, should determine what is done with the difference.

- **Include lane changes when figuring how much money the district is putting into salary increases.**

- **Limit the number of lanes that can be jumped in one year.**

- **Build some logic into the schedule.** If negotiations wind up before an arbitrator, the district will need to demonstrate an objective rationale for differentiating between classes of teachers.

- **Pay a flat stipend for extra duties, such as coaching.** Another alternative is to index such duties to the lowest step on the schedule, not the step of the teacher involved.

- **Limit the number of teachers the district will pay for having a master's degree.** This will be difficult to negotiate, but the district may be able to trade it for something else the union wants.

Alternative Concepts

Some districts have succeeded in altering the

fundamental structure of the salary schedule or eliminating it entirely. Below are descriptions of the innovations, along with the strategies used to get them approved and the advantages over the traditional salary schedule.

Alternative No. 1: No Salary Schedule

The 2,300-pupil Mars (Pa.) Area School District abolished its salary schedule in 1976. In exchange, teachers received two salary increases in one year. In an interview, Supt. Anthony Rago explained that the district was able to afford the two increases by earning interest on the portion of the salaries that was deferred. The teachers received a 7 percent increase in September 1976 and an 8 percent increase the following June. Teachers received a flat $750 increase the second year of the contract. Averaging the two increases over the first fiscal year, the teachers received the same overall percentage increase they had wanted, Rago explained. By holding a large sum until the last three months, however, the district was able to invest those funds during the first nine months. The earnings went into other portions of the district budget.

The district also initiated a technique in hiring new teachers that sometimes saves money. When district schools have job vacancies, principals do an initial screening and send the finalists to Rago. He begins the interview by describing the district pay plan. He asks the prospective employee: "What do you believe you're worth to the school system?" The new teacher's salary is the figure on which Rago and the teacher agree.

The new system has two advantages. Rago can offer more money to applicants for hard-to-fill positions, such as physics teachers. And he can hire teachers who are willing to work for less than they would have earned under the old salary schedule.

Rago does not necessarily pick the least expensive applicant. Rather, he tries to pick the person who will make the biggest contribution to the district.

When the pay system was changed, all teachers in the system retained their old salaries, plus the negotiated increases. The new system permits a one-time bonus of $600 the year a teacher receives a master's degree. This becomes part of the salary, but the bonus itself is not repeated.

"The salary schedule doesn't dissolve overnight," Rago noted. "The more turnover you have, the less of a schedule you have. If you have the system only one to two years and give it up through bargaining, you haven't gained anything," he said.

To win acceptance for switching to no salary schedule, Rago said district officials must build a climate of trust and be totally candid with teachers. Even then, he said, the union may paint the superintendent as a "bad guy" with new employees. Rago said the union representative finds out from the new employee what salary was offered and then says, "If you had been in the union, you would have gotten more money." Rago also noted that the local union probably will be criticized by teacher bargaining units in other parts of the state because the system is so different from the norm.

The flexibility in determining salaries can lead to some morale problems, which may cause teachers to "end-run" the superintendent to the board, the Pennsylvania administrator noted. Another problem can occur when the district must rectify a decision made under a salary schedule and "plug it into an almost non-existent salary schedule," Rago said. He cited this example: The district had an arbitration case brought by a teacher who was not given an increment the year he was on sabbatical leave. "You can end up with an arbitrator's decision that causes you to pay more than you wanted to initially," the superintendent said.(The case cited by Rago ended with an amicable settlement outside of arbitration.)

A district implementing a similar plan would have to be prepared at future negotiations for proposals to reinstate aspects of a standardized schedule, Rago advised. He also cautioned that district administrators would have to build in a cushion to allow some flexibility in hiring replacements.

The advantages of the new system were summarized by Rago: flexibility in hiring, no more double-jumping of salary lanes when teachers earn advanced degrees and being able to judge new teachers more on professional expertise than by a rigid salary schedule.

For more information, contact: Anthony Rago, Superintendent, Mars Area School District, P.O. Box 369, Mars, Pa. 16047.

Alternative No. 2: Frozen Schedule

The Grafton (Mass.) Public Schools, a district of 2,300 pupils southwest of Boston, adopted a "frozen" salary schedule in 1974 and saved approximately $500,000 the first five years. In the 1980 round of negotiations, teachers proposed a return to the more traditional type of schedule, but they ultimately signed a contract that retained the frozen schedule with a few modifications.

District savings come through teacher turnover.

Those continuing with the system receive cost-of-living increases and step increments. New teachers hired as replacements, however, do not inherit cost-of-living increases granted in previous years.

The crucial difference: In one respect, the Grafton salary schedule differs little from those in other districts. Teachers receive increments for years with the district and for educational attainment. The crucial difference is that base salaries remain frozen, and increments are contained in the schedule as flat dollar amounts. Each year, the district and the teacher union negotiate an economic adjustment in addition to the step increments, *but the economic adjustment is not added to the schedule.*

A hypothetical example helps explain how the district saves money. Teacher A has a master's degree and five years' experience. The base salary is $10,200. When years of experience are added, the teacher ends up at step six on the schedule — or a 1980-81 salary of $12,385 (the base salary plus the increments through step six). In the previous three years, the economic adjustment for teacher A amounted to $500 per year in addition to the salary advancement on the schedule, giving the teacher a 1980-81 salary of $13,885. Under a traditional system, this $1,500 would have been added to the schedule, bringing the salary for all teachers with a master's degree and five years' experience to $13,885.

Teacher A leaves the district and teacher B is hired as a replacement. Teacher B also has a master's degree and five years' experience, but teacher B will be paid $12,385 — the same salary without the economic adjustments.

Why did teachers agree to the frozen schedule? In an interview, Grafton Supt. Kenneth J. Grew said the district gave teachers "a little more money" the first time the schedule was negotiated. The district also argued that it was neither legal nor proper for the teacher union to negotiate for people who are not staff members, in other words, those who will be employed by the district in the future.

The district also pointed out the financial advantage of the new schedule for teachers continuing with the district. Grafton approaches bargaining with a fixed dollar amount for increments, educational attainment and an economic adjustment.

To illustrate: The 1979-80 incremental increases amounted to about 2 percent of payroll, so the school committee (school board) offered a 5 percent economic adjustment to bring the total average salary increase to 7 percent. (The final settlement was 7.8 percent.)

When the frozen schedule was first introduced, the district and the teachers union agreed to mutually determine how the economic adjustment would be distributed. Every year so far, they have agreed to apply it as an across-the-board percentage increase, based on each person's salary. This equalizes raises because the lower-paid teachers receive incremental increases. For the higher paid teachers at the top of the salary schedule, the percentage increase produces more dollars, which offsets the lack of an increment.

Because the district offers a flat amount for the economic adjustment, each teacher gets more when it is divided only among those teachers who continue to stay with the district.

Grafton teachers have not lost ground economically, Grew said. The district surveyed other districts in the area and found that its teachers were making as much, and sometimes more, than their counterparts.

Between 1974 and 1980, the district made only two changes in its schedule. Starting salaries were raised to keep the district competitive, and some increments were changed to provide uniformity.

Grew offered these tips to districts interested in adopting the frozen salary schedule:

1. Maintain control of starting salaries. Negotiate a clause that leaves the starting salary to board discretion, Grew advised. Grafton did not raise starting salaries until 1979 because the district had benefited from a buyer's market.

What has the union said about the starting salaries? Now much. Since any money allocated to new teachers reduces the amount available for economic increases, the union has not pushed to increase the starting salaries.

2. Negotiate a clause leaving to the superintendent's discretion the amount of credit new teachers will receive for previous teaching experience. Grafton's clause says the district "will give due consideration to teaching experience."

Grew has been able to hire highly qualified, experienced teachers for less money. The teachers are happy to get the jobs, Grew said, because they have been priced out of most districts. By the same token, Grew may compensate a teacher fully for experience if competition is keen and the teacher qualifies for a hard-to-fill position.

3. Negotiate a clause giving the superintendent the right to pay a recruitment bonus of up to $1,000 if needed to fill a position.

4. Negotiate a reduction-in-force clause that says teachers subject to recall will not be paid the

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The Consumer Price Index: Handle with Care

Districts and teacher unions have been using the Consumer Price Index (CPI) as a matter of course in determining salary increases. Published by the Bureau of Labor Statistics (BLS), the index appears to present a concrete indicator of the increasing cost of living.

Some negotiators, however, caution of many pitfalls to using the index. Others say they can live with the CPI as long as any formulas contain safeguards for managment.

Below are the pitfalls mentioned by negotiators and by *Teacher Compensation and Fringe Benefits*, a handbook on collective bargaining prepared by the staffs of the Illinois and Arizona School Boards Associations:

- The index measures month-to-month changes in prices, which is not the same as the cost of living.
- The index averages price increases and decreases. The items teachers buy may actually be decreasing while the overall CPI is increasing.
- The CPI contains some items that are paid by the school district, not by teachers. Districts offering comprehensive medical coverage, for example, pay for increases twice if they use the CPI: once through an increase in salary and once through an increase in fringe benefits.
- The CPI does not include some significant consumer expenses, such as income and social security taxes.
- The CPI does not necessarily affect all consumers equally.
- The CPI is heavily weighted toward urban consumers.

Coping Strategies

1. **Become more knowledgeable about the CPI** by obtaining the following free publications from the Bureau of Labor Statistics (911 Walnut St., Kansas City, Mo. 64106): *Escalation and the CPI*; *The Consumer Price Index: Concepts and Content over the Years*; and *The CPI: Does It Underestimate or Overestimate Inflation? The Employment Cost Index* describes a tool put into use in 1975 by the BLS to measure quarterly changes in the rates of employee compensation of private, non-farm workers. *Level of Benefits: A Pilot Survey* describes a 1980 survey of fringe benefits.

2. **Get expert advice.** James Moran, a well respected New Jersey negotiator, advises districts to turn to outsiders when necessary. One example: In multiyear agreements, a district may benefit from sliding the base (instead of relying on 1967 as the base year for CPI data).

3. **Use a regional index.** The national CPI is inappropriate, Moran said, because of regional variations in costs. One alternative is the CPI indexes for large cities, published by BLS.

4. **Examine wage and CPI increases historically.** Districts may be able to demonstrate that increases over time, say from 1967, have more than compensated for recent losses in buying power.

5. **Include step and lane changes in a historical analysis.** Individual teachers are often much better off than the total salary schedule would indicate, because teachers move both down and across the salary schedule.

6. **Construct formulas with upper limits.** Frank Forbes of the National School Labor Relations Service recommends that multiyear agreements based on CPI contain a guaranteed increase, plus a formula with weighted increases. To illustrate: A district could say it will give a 5 percent increase no matter what the CPI does, and give one-for-one credit for increases in the CPI between 5 and 7 percent. Any 1-point increase between 8 and 10 percent would be matched by .5 percent increase, and there would be no additional increases above 10 percent. In this example, the ultimate liability of the district is 8.5 percent.

7. **Make changes in the CPI work both ways.** Moran suggested pegging future salary increases at a certain level with a formula that increases the raise proportionately for amounts the CPI rises above that level and decreases the raise if the CPI drops.

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economic adjustment for the year or more they are gone.

Grew recommends the frozen salary schedule for all districts, because all will experience some turnover. In Grafton, the turnover rate is aproximately 7 percent.

For more information, contact Kenneth J. Grew, Superintendent, Grafton Public Schools, 3 Central Square, Grafton, Mass. 01519.

Alternative No. 3: Education-Only

The 3,100-pupil Peru (N.Y.) Central School District simplified its salary schedule by getting rid of vertical steps for experience. Remaining are the base salaries for different levels of education, such as bachelor's degree, BA plus 15 credits and master's degree. The levels are separated by set increments. A teacher with a master's degree, for example, gets an increment of $405 on top of the negotiated increase for the year.

The change came as part of a three-year contract that called for 7 percent increases the first two years and a wage reopener for the third year. Each teacher started the new system with the current salary as a base, to which increments are added each year. Supt. Phil Bonner explained the three advantages of the new system in an interview:

1. It eliminates the philosophical battle at the table to determine whether negotiated increases include the increment or are in addition to it.

2. The superintendent has greater flexibility in determining salaries of new employees. The base salary for each educational level is the minimum Bonner can pay, but he may adjust the new employee's salary upward. Under the old schedule, an arbitrator ruled that the district had to grant credit for each year of outside experience. With a salary schedule, Bonner was locked into a set amount. "Now," he says, "if I need to go $200 more, I can do it."

3. Calculations are simpler. Under the old system, the school board was concerned about having a lid on the salary schedule. Instead of adding steps above the 18-year maximum, the district began giving bonuses at 15 years and 18 years. When costing out salary proposals, administrators had to consider bonuses, educational increments, experience increments and negotiated increases. "The salary schedule is modified every year, which led the management team to ask, 'What's the sense of continuing the salary schedule?'" Bonner explained.

To prepare cost estimates, Bonner multiplies current costs for teacher salaries by various percentages in across-the-board settlements. The calculation also includes an amount for added credit hours received by teachers.

What does Bonner think of the new system? "I like it better — every man to his own poison."

Alternative No. 4: Tenure-Based

When teachers in the 1,000-pupil Eau Claire (Mich.) Public Schools signed a three-year contract in 1977, they agreed to abandon the traditional education-and-experience schedule for one more closely tied to achievement. Although most teachers rebel at the thought of performance based salary increases, Eau Claire officials point out that the state tenure law provides a structure that lends itself to this approach.

In Michigan, teachers earn provisional tenure after two to three years of work in a district with satisfactory evaluations. In order to get a continuing (or permanent) teaching certificate, a teacher must take 18 additional hours of course work and have three more years of successful teaching. A tenured teacher who transfers to a new district has one year in which to earn tenure in the new district through favorable evaluations.

Eau Claire had 11 steps under its old schedule. The new schedule has six: start, tenure, continuing certificate, 8-9 years in Eau Claire, 10-11 years, and 12 or more years.

"I didn't have to trade anything for the new schedule," said Supt. William J. Horie. "We have a very reasonable, understanding group of teachers."

The schedule has three lanes: one for teachers with a bachelor's degree, one for a BA plus 15 credits and one for a master's degree.

The district agreed that no teacher would lose salary under the new system. The amount of money between steps one and two (start and tenure) is about double that on the old schedule, so those teachers gained a large increase. But the conversion to a compressed schedule caused some steps to be bracketed. For example, all those with two or three years' experience were placed on step two.

The district did not convert with the idea of saving large amounts of money, although the hiring of new employees results in savings. In keeping with the tenure law, all new teachers are "provisional," until they complete one year with satisfactory evaluations. Therefore, new teachers are hired at step two (tenure), even if they have a continuing certificate. Furthermore, the district credits no more than eight years of service outside the district, which ensures that a new teacher will not skip several steps after achieving continuing certificate status.

"I would recommend the system to other districts," said Franklin Jackson, president of the school board. Teachers apparently are satisfied with the arrangement as well. In 1980, they signed a new three-year contract with the tenure-based salary schedule intact.

For more information, contact: William J. Horie, Superintendent, Eau Claire Public Schools, West Main St., Eau Claire, Mich. 49111.

Alternative No. 5: Merit-Based

The Flagstaff (Ariz.) and Los Alamitos (Calif.) School Districts carry performance-based salary schedules one step further than Eau Claire: Advancement on all vertical steps is contingent on positive evaluations.

Similarities between the two systems provide a useful model for districts interested in adopting a merit-based system.

In both Flagstaff and Los Alamitos:

- Teachers were heavily involved in designing the evaluation system. In Flagstaff, the process took 18 months. In Los Alamitos, representatives from every school building participated in a districtwide committee.
- The districts work to ensure that principals are skillful and fair in evaluations.
- The systems ensure due process.

In Flagstaff, teachers are observed in class three times for each evaluation. Nontenured teachers are evaluated twice each year. At least one observation must be made by the building principal, but the principal may delegate other observations to supervisors, department heads or other teachers. The teacher being evaluated may request an observation by someone other than the principal.

Teachers must be notified early in the year if, based on their evaluation, their increment may be withheld. (Note: In some states, it may be necessary to state in the contract any intent to withhold an increment based on evaluation results.)

In Flagstaff, once a recommendation has been made to withhold an increment, the teacher is entitled to request another observation or a hearing. At any rate, teachers are given time to improve and are then reevaluated. If they improve — and that is the purpose of the system — they receive their increment, said Supt. David Williams in an interview.

Los Alamitos teachers are evaluated in seven areas according to established criteria:

1. Professional attitudes, attributes and conduct.
2. Professional relationships with pupils, parents and colleagues.

Salary Policy May Be the Real Problem

Although this chapter highlights efforts to abandon the salary schedule as a cost-saving alternative, another side of the story demands telling. It comes from Chicago attorney Fred Lifton.

"As troublesome as a salary schedule is," Lifton notes, "you do have maximum figures on it. Without a salary schedule, people keep getting increases. Our experience generally has been that the top salaries tend to be higher in districts without salary schedules than in those with salary schedules." Another problem pointed out by Lifton: "Without a salary schedule, you still have a big problem in hiring new people with experience. Where do you put them in the salary framework?"

Lifton's larger concern is district policy. Districts generally do not have clear policies on salaries, he said. "The salary schedule should reflect district policy. Once a district determines its policy on salaries, then a system — whether a salary schedule or something else — should be designed to accommodate that policy." The salary schedule should, for example, reflect the kind of experience the district values.

Lifton notes, too, that many districts make the mistake of not clearly defining a number of important terms. For example, what kind of additional training justifies lane or column movement; does training have to be at the graduate level; does it have to be in the teacher's field; does it have to be pre-approved by the district administration; does it have to be obtained at an accredited institution? These are things a district should spell out in substantial detail, Lifton noted.

3. Professional skills, such as instructional techniques.
4. Preparation and planning.
5. Learning environment, which includes nine objectives, from bulletin boards to student discipline.
6. Related professional responsibilities.
7. Pupil progress.

Objectives for pupil progress are set by the teachers themselves at a fall planning session, said Ron Zybach, personnel director at Los Alamitos. Objectives may be set for an entire class, a group within the class or a couple of students. The principal meets with teachers later in the year to determine how well the students are meeting the expectations.

The process calls for at least one 30-minute classroom observation a year and twice yearly observations of probationary employees. In addition to classroom observations and conferences on pupil progress, the principal evaluates teachers in areas such as participation in staff meetings and relations with colleagues, conferences with parents and special duties.

A teacher who fails to get a raise receives ample warning, Zybach said. If the problem is persistent tardiness, for example, the principal would probably give a couple of oral warnings followed by a written warning. More documentation would follow if the tardiness persisted.

Zyback and Williams both said that most teachers can be convinced the system is fair. "It's pretty hard to argue against the concept that you get a raise when you're doing satisfactory work and you don't if you're not," Zyback said.

Not all teachers like the system. Two Los Alamitos teachers filed a suit when their increments were withheld. The Superior Court ruled in favor of the teachers. On appeal, the district won. The court said the Los Alamitos salary schedule provided a uniform plan for compensating teachers according to education and experience and that defining a year of experience as one completed with satisfactory performance was permissible under the law. The state teachers organization requested a hearing by the California Supreme Court, but it refused to hear the case.

Both school districts implemented their evaluation plans outside the arena of collective bargaining. Flagstaff does not bargain with its teachers. Los Alamitos began the merit system in 1972 and did not begin bargaining until 1976, at which time the plan became part of the first contract. The district's positive track record was a tremendous advantage in getting the plan into the contract, Zybach said.

"When we bargained it," he explained, "there was little discussion at the table because the merit advancement was a standard accepted by teachers." Most districts, he noted, would probably have an uphill battle convincing a militant teacher union to adopt the plan.

The plan would be easier to implement in a state with a law requiring teachers to write measurable objectives by which they can be evaluated. California has such a law. In addition, the plan would probably be easier to implement in a district in which a high level of trust existed between teachers and administrators.

One strategy Zybach recommends is to put the language describing non-advancement in case of poor performance in the section of the contract that describes application of the salary schedule, not in the evaluation clause. The requirement should be stated positively, such as: "A teacher receiving a satisfactory evaluation of performance will earn a year's service credit for an increment." (Note: Evaluation criteria should not be included in a contract. "That could be a very dangerous thing to do," noted one negotiator.)

Salary Negotiations Tools

Negotiators recommend preparing several charts depicting employee costs for salaries and fringe benefits and demographic data that can provide clues to possible union demands. Tools that are useful include:

- A scattergram. This is a chart showing all steps of the salary schedule, the number of employees on each step and totals. It presents a picture for a given point in time, usually for the school year ending, not for the new year. Fred Lifton cautions: "It is important to use the same scattergram throughout negotiations. If, for example, negotiations extend into a new school year, the negotiator should not substitute a new scattergram that reflects changes in staffing, e.g., increases or decreases." The scattergram is used to measure improvements in benefits to staff members, not total cost.

- An age chart. Counting the number of employees by five-year age groups can suggest what kinds of fringe benefits will be important to the bargaining group. A large number of young employees, for example, might indicate a desire for more personal leave, while older teachers

would be more likely to push for increased retirement benefits.

- A length-of-service chart. This chart also tabulates employees by groups, including those without tenure and others grouped in three- to five-year spans. It can help predict how many teachers are near retirement or might be interested in an early retirement program.

Percent v. Dollar Increases

Districts can grant increases on a percentage or flat dollar basis. Some negotiators recommend negotiating from a total dollar figure for salaries and fringe benefits. If teachers want more health insurance benefits, the added cost would reduce the amount of money available for salary increases.

Negotiators from the Illinois Association of School Boards favor the flat dollar approach. The problem with percentage-based bargaining, said the association's Brian Braun in an interview, is that a percent increase has different long-range implications, depending on its distribution.

Generally, dollars spent on fringe benefits are worth more to teachers because they are not subject to income tax. The IASB negotiators estimate that $1 paid for fringe benefits is worth about $1.30 to the employee, while $1 plugged into the salary schedule is worth only about 70 cents.

A different perspective: Flat dollar increases tend to benefit employees at the low end of the salary schedule, while percentage increases benefit those with higher salaries. The income distribution of employees may determine whether flat dollars or a percentage will be more advantageous to the school district.

Costing Out the Labor Agreement, by Cathleen Otto of the New Jersey School Boards Association, points out that dollar raises, over time, can compress a salary schedule, distorting the proportions between steps. This is particularly true with hourly wages.

Calculating Increases

When calculating the cost of either a percent or flat dollar increase, an administrator must take into consideration all known changes among staff.

Consider: In the hypothetical Academic School District, the administrator knows that Teacher A on step four is completing a master's degree, which will entitle him to move to the master's lane for a $700 increase, in addition to the step increment.

Teacher B, who is at the top of the bachelor's lane, is retiring and will not be replaced. Teacher C, who is at step one, will not be renewed or replaced.

Calculations
Based on Percent Increases

Total salaries	$407,500
Less Teacher B	− 14,500
Less Teacher C	− 10,000
Plus Teacher A's educational increase	+ 700
Subtotal	$383,700
10% of increase	38,370
Total payroll	$422,070

Flat dollar amount: The cost is computed by multiplying the dollar amount by the number of teachers who will be working for the district under the new contract.

Calculations
Based on Flat Dollar Increase

Amount proposed	$1,200	Payroll adjusted for personnel changes	$383,700
No. of teachers	× 28		
Cost to district	$33,600	Increase	33,600
		Total	$417,300

Retroactive Increases

What if negotiations continue past the expiration date of the old contract and settlement is not expected until spring? Teachers will want any pay increases retroactive to the previous September.

Granting the retroactive increase can be less expensive in the long run than paying a higher increase to compensate for six months of lost pay. Why? Because all increases become part of the base salary and are compounded in future years.

Multiyear Contracts

Negotiations are usually time consuming and often create tension between employees and school management. For this reason, many districts try to sign multiple year agreements. Nearly one-third (31 percent) of the respondents to the **Critical Issues Survey** for this report signed two-year contracts with teachers during their last round of negotiations.

Contracts for one year or less were reported by 27 percent of the respondents. Only one-fifth of the

SCATTERGRAM
A-PLUS SCHOOL DISTRICT

Step	BA	No. Staff	Cost	Step	MA	No. Staff	Cost	Step	PHD	No. Staff	Cost
1	$10,000	2	$20,000	1	$10,700			1	$12,000		
2	10,500			2	11,200			2	12,500		
3	11,000			3	11,700	2	23,400	3	13,000		
4	11,500	1	11,500	4	12,200			4	13,500		
5	12,000			5	12,700	2	25,400	5	14,000		
6	12,500			6	13,200	3	39,600	6	14,500	1	$14,500
7	13,000	2	26,000	7	13,700			7	15,000		
8	13,500	1	13,500	8	14,200	3	42,600	8	15,500		
9	14,00	2	28,000	9	14,700	3	44,100	9	16,000	1	16,000
10 and over	14,500	5	72,500	10+	15,200	2	30,400	10+	16,500		
Totals		13	171,500			15	205,500			2	30,500

Total Number of Teachers: 30
Total of Teacher Salaries: $407,500
Average Teacher Salary: $13,583

respondents had three-year contracts, and less than one percent had contracts longer than three years.

Two considerations in evaluating the desirability of a multiyear agreement: (1) Is it legal under state law? and (2) Can the district afford it?

In the private sector, three-year contracts are typical, noted Fred Lifton. In education, he said, two-year contracts are fairly typical, and the trend is toward three years. "Going back to one-year contracts would be very bad," he said.

In some states, multiyear contracts may be illegal because districts budget for only a year at a time and can set taxes only for the year ahead. In addition, a district may have to agree to too high a price to win union approval of a two- or three-year contract.

What is too high a price? Language concessions that impede administrative ability to manage or cost-of-living clauses that provide no upper limits. "A multiyear package should have both minimum and maximum costs so that reasonable predictions can be made by the board," says *Teacher Compensation and Fringe Benefits*. "Boards cannot control the economy, but they can certainly limit the contract."

Salary settlements can be constructed four ways:

- A prescribed increase for each year with no provision for renegotiation.
- Reopener clause.
- A formula that ties increases or decreases to changes in the cost of living.
- End-of-year clauses. These clauses give automatic increases only at the end of a contract year.

Reopeners, if unrestricted, negate most of the advantages of a multiyear contract, experts warn. And, Lifton noted, reopeners are generally more difficult to negotiate than a full contract because "there are just not enough items to deal with."

Districts should not agree to "escalator" clauses but provide security clauses that have both a floor and a ceiling, James Moran said. For example: A formula, tied to a regional price index, might raise the agreed-upon salary increase for the third year by a quarter of a percent for each point the index dropped below that same level. "Never negotiate an escalator or a reopener one way," Moran advised. The clause should provide security for management as well as for employees.

Tip: Employee unions are normally reluctant to agree to multiyear contracts in times when the economy is unsettled. Therefore, Moran advises negotiators to point out that inflation cuts both ways. Since the district is also affected by inflation, the canny negotiator will suggest that the district may not be willing to offer as large an increase two years from now as it is currently offering for the last year of a three-year contract. "If management is willing to gamble, employees ought to be willing to gamble, too, on a solid settlement for the three-year period," Moran concluded.

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Front-Loading and Back-Loading

Multiyear contracts that contain specified increases may be structured three ways: they can spread increases equally over the contract, they can offer the highest increase the first year (front-loading) or the highest increase the last year (back-loading). Front-loading is the most expensive of the three options because first-year increases are compounded in later years. Back-loading, which is similar to a delayed-raise technique, benefits the district by providing money that can be invested until needed for increases.

Front-loading presents a psychological danger, cautioned Brian Braun. "If the district proposes a three-year contract with increases of 9 percent, 8 percent and 7 percent respectively, the union is likely to respond, 'Okay, we'll take a one-year contract for 9 percent,' on the gamble it will be able to collect more later," Braun explained. (Note: The district must make clear that its better offer applies only to a multiyear contract.) Another problem with front-loading is that school personnel may feel very unhappy during the last year of the contract.

Computing a Multiyear Package

Multiyear salary offers should be examined from two perspectives: the effect on the district as a whole and the effect on the individual teacher. A logical approach for examining the offer's effect on the individual teacher is to compute various alternatives according to the average teacher salary in the district.

The following example uses computations based on a formula described in *Costing Out the Labor Contract:*

Option 1

Year	%	Cost to District In Salary Increases	Avg. Increase Per Teacher	Avg. Teacher Salary
1	7%	$ 70,000	$ 700	$10,700
2	7%	144,900	749	11,449
3	7%	225,043	801	12,250
		$439,943		

Option 2

Year	%	Cost to District In Salary Increases	Avg. Increase Per Teacher	Avg. Teacher Salary
1	11%	$110,000	$1,100	$11,100
2	5%	165,500	555	11,655
3	5%	223,775	583	12,238
		$499,275		

Option 3

Year	%	Cost to District In Salary Increases	Avg. Increase Per Teacher	Avg. Teacher Salary
1	5%	$ 50,000	$ 500	$10,500
2	5%	102,500	525	11,025
3	11%	223,775	1,1213	12,238
		$376,275		

The Anytown School District plans to offer teachers a 21 percent increase spread over three years. The district employs 100 teachers at an annual payroll of $1 million. The average teacher salary is $10,000. Three options are considered: (1) 7 percent a year; (2) 11 percent, 5 percent, 5 percent (front loaded); and (3) 5 percent, 5 percent, 11 percent (back loaded.)

The teachers' negotiating team can do the same calculations. The district may be able to sell Option 3, however, if it approaches negotiations on a dollar rather than a percentage basis. If the district says it has only $376,000 to spend on increases over three years, the 5-5-11 percent option looks better than 6-6-6 percent, which is what the same amount of money will buy if the percent increases are spread equally.

Note: In looking at calculations, districts must keep two points in mind — the cost to the district and what kind of increase employees are going to get. "Districts must bargain the benefits, not the cost," Lifton noted. "The board has to know the cost to determine if it can afford the benefits, but it should not bargain the cost. That would amount to bargaining the budget."

Pitfall: One problem in negotiating multiyear agreements is that the negotiators may overlook the escalating costs of a fringe benefit during the life of the contract. Insurance premiums, for example, may skyrocket in the second and third years of a contract. One way to avoid this problem is to specify a dollar amount for the benefit. Another method is to negotiate a guaranteed premium for three years. Beware, however, of the guaranteed premium. Multiyear insurance contracts are not always bargains. The carrier will anticipate increased operating costs and will probably build in the increase from the first day of the contract.

For example, a carrier might offer insurance for one year at $100 and for three years at $120. Under the three-year contract, the district is paying $120 from the first day. It would be better to negotiate a first-year rate of $100, a second-year rate of $110 and a third-year rate of $120.

Chapter X

Fringe Benefits

Fringe benefits have become such a large part of the payroll that they can scarcely be considered "fringe." Experts place the cost of fringe benefits in the private sector at up to 37 percent of payroll.

William Wilken of the National Conference of State Legislatures noted in an interview that the number and value of fringe benefits offered by school districts vary greatly. "Fringe benefits are virtually non-existent in Texas and Oklahoma," he said, "while in New York, it's not uncommon to find school districts where fringes amount to 35 percent of salaries."

A survey of 600 school districts by the Illinois Association of School Boards found that fringe benefits amounted to 25 percent of the average Illinois teacher salary.

The **Critical Issues Survey** for this report asked districts to list their top three management objectives in bargaining. The most frequently mentioned objectives were to hold the line on salaries and fringe benefits. Other objectives high on administrators' lists: To restrict the use of personal or sick leave or to place a cap on insurance payments. One respondent summed up the ramifications of these compensation components with a succinct objective: "to remain solvent."

Helpful Tips

Experts offer the following tips on keeping the cost of fringe benefits down:

1. Bargain salaries and fringe benefits as a total package. Districts should establish a dollar limit and bargain all compensation within that limit. Then, for example, if teachers want to increase the number of sick leave days, the district can deduct this cost from the amount available for salaries. This "pie-is-limited" approach helps keep union demands in perspective.

2. Maintain the same proportions from year to year on salaries and fringe benefits. Districts "ought not to pioneer fringe benefits" in their geographic area, advised New Jersey's James Moran. Instead, they should try to stay "at about the mid-point" of the range of fringe benefits being offered by both public and private employers. Why? "Districts rarely get credit (for unusual benefits), and they are subsumed in the contract," Moran said. Once in the contract, benefits are difficult to drop.

One example: A district has $350,000 to spend on salaries and fringe benefits. During the last round of bargaining, it spent 90 percent of the funds on salaries and 10 percent on fringe benefits. Using Moran's approach, it would spend about $300,000 among salary increases and increments on the schedule and roughly $35,000 on either new benefits or increased premiums for the old benefits. The district could deviate somewhat — such as spending $40,000 to $50,000 on fringe benefits and correspondingly less on salaries. However, a district should not go "too far afield" from the proportions it has paid in the past, Moran said.

3. Write dollar proposals on fringe benefits. Districts should stipulate an expenditure of, say, $100 for health insurance, rather than 100 percent of the premium. Moran also suggested stipulating in the contract that any additional costs due to premium increases during the contract period would be paid by employees through payroll deductions. When a district agrees to pay a percentage of a premium, it automatically escalates its obligation if premiums increase.

4. Look at the long-term costs of fringe benefits. Fringe benefits offered to one group of employees are often extended to all employees in the district.

This potential cost should be considered in management's deliberations. Also, a benefit that costs the district little this year could have a big price tag later. Consider: Giving classified employees additional vacation days after 10 years in the district may affect relatively few employees now, but many employees five years from now. A chart depicting the number of employees according to years of service and the turnover rate among classified employees could help evaluate the long-term cost of this benefit.

5. Determine the cost of all benefits. The cost to the district should include pay for time not used, according to Frank Forbes of the National School Labor Relations Service. The cost of an additional day of sick leave, for example, would include not only the daily rate for substitutes but a proportion of

Wilmette Offers a Cafeteria of Benefits

Not all employees need every benefit offered by a district. An employee whose spouse works, for example, may already have health insurance. Some districts have curtailed costs and expanded options for employees by using a cafeteria approach. Each employee is allocated a dollar amount that may be spent on a choice of benefits.

The cafeteria approach, a fairly new idea in education circles, appear to offer substantial benefits to school districts. For example, the amount of dollars to be spent on the cafeteria is the single item under discussion at the negotiating table. When the negotiations are completed, moreover, the union cannot dispute the fact that employees received fringe benefits worth a certain amount. Another plus: When a district is bargaining with more than one group, use of the cafeteria approach can reduce "whipsawing" tactics, whereby one union strives to gain an additional benefit. All unions receive the same amount in benefits.

The Wilmette (Ill.) Public Schools allocated $680 worth of fringe benefits in 1980-81 to each employee. Staff members are required to purchase long-term disability insurance for $40. They may spent the remaining $640 on a combination of the following: medical insurance and exams; an eye or dental examination; term life insurance; noncredit course work or seminars; professional dues; or expenses for an annual education convention.

One advantage of the cafeteria approach, said David Allen, Wilmette assistant superintendent for business services, is that the district treats all employees the same, without regard to marital status or job classification. The benefit is a fixed dollar amount; therefore, the district is not automatically obligated to cover escalating insurance premiums. In addition, the amount is highly visible, so employees know just how much the district is spending.

One disadvantage is increased paperwork. But one way to overcome this problem is to refuse any benefit that requires an inordinate amount of bookkeeping. (One example would be reimbursement for prescription drugs.)

Allen noted that the paperwork requirement in his district is more than offset by having control of the dollars rather than being obligated for escalating premiums.

Another disadvantage: Insurance companies may refuse to write policies to cover an uncertain number of employees. At the very least, the premiums are likely to be higher because fewer employees will be involved. Allen said Wilmette had no trouble getting good rates from competitive bids. He added, however, that the cafeteria concept was started under favorable market conditions.

Caution: Cafeteria benefits were originally used by private industry as a way to provide tax-free benefits to highly paid executives. As a result, the practice is now governed by Internal Revenue Service regulations. Districts interested in the concept are advised to check their plan against the federal regulations, which may be found in most public libraries in the *Federal Tax Coordinator*, Volume H, pages H-1704 to H-1714.

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the average teacher salary. Sick leave contains three costs to districts: sick leave days used by teachers, substitute costs, and the potential cost of unused accumulated sick leave if reimbursed by the district.

Note, however, that there is a point of diminishing returns in economic costing. The difficulty of costing and the possible insignificance of the item to the total package may outweigh the utility of costing. Another point to remember about costing: Although a district may be able to prepare an elaborate chart depicting the cost of an item, it must be prepared to answer whatever objections the union negotiator raises about the method used. In other words, the district may be creating more problems for itself than need be, and a simpler method could be to estimate the cost of an item and include it in a package.

Unused Sick Leave

Many districts negotiate provisions that encourage teachers to hold down the use of sick leave by rewarding them with a retirement bonus or severance pay based on unused accumulated sick leave. The costs are not difficult to determine during the life of the contract if accurate records are kept. Projecting long-term costs, however, requires some assumptions in the calculations based on the amount of turnover in the district.

Payments for unused sick leave can be costly in a district with large numbers of teachers nearing retirement. *Costing Out the Labor Agreement* recommends that this benefit be rejected unless the following controls are initiated:

- Maximum number of days.
- Maximum dollar amount.
- Token reimbursement per day (not daily salary) upon retirement.
- Minimum number of years' continuous service with the district in order to qualify.
- Notice provisions and timing of payment.

Requiring teachers to give notice of intention to retire is necessary if the district is to budget for unused sick leave payments. This benefit should not be made retroactive, but should apply only to sick leave accumulating from the date of the agreement.

Note: Districts should check state law before negotiating an unused sick leave provision. Payment for work not performed is illegal in some states. Note, too, that unused sick leave provisions generally have little current trading value.

Leave Day Limits

The following tips on negotiating sick and personal leave days came from interviews with negotiators and from the handbook, *Teacher Compensation and Fringe Benefits*, prepared by the Illinois and Arizona School Boards Associations.

1. Clearly limit sick leave in contract language. A contract that stipulates each teacher shall receive *at least* 10 days of sick leave is really granting unlimited sick leave. Limits should also be clearly specified on accumulation of sick leave.

2. Beware of sick leave banks. "They're very tricky and should be left to those who know what they are doing," Lifton cautioned. Employees are often less cautious about using up their own sick leave on minor illnesses if they have a "bank" to fall back on. The amount of bookkeeping doubles because two sets of data are kept for each employee: regular sick leave and bank credits. When an employee takes a sick day, the record keeper must determine where the deduction should be made. Since withdrawals from the sick leave bank are based on individual need, a meeting will be required to rule on the request, requiring one or more administrator's time.

Management should not agree to a bank if the union wants to jointly administer it.

Other disadvantages: A high-salaried employee may use days contributed by a low-salaried employee, and someone new to the district may use more leave than otherwise earned. Keep in mind, too, that as far as the union is concerned, once a sick leave bank is instituted, it is not viewed as a cost item. Two ideas from Lifton to counter this problem: (1) Include as a cost item in negotiations the number of sick leave days taken from the bank in the previous year. (2) Consider the cost of the sick leave bank in lieu of or in addition to the cost of the long-term disability insurance policy.

Another opinion: Not all districts are against sick leave banks. Those who pay for unused accumulated sick leave point out that donations to the sick bank are days that require no reimbursement. Others contend that a sick leave bank lowers premiums for long-term disability insurance. Still others say a bank can decrease demands for additional health insurance.

Suggested safeguards for sick leave banks include:

- Require employees to use all personal leave, including that accumulated from prior years, before using bank days.

- Require a fairly significant waiting period between the time sick leave days are exhausted and bank days may be taken. The waiting period days are not paid.
- Require a fairly significant waiting period between the onset of the illness or accident and the time bank days can be taken.

3. **Limit the definition of qualifying illness for sick leave.** Instead of letting employees use sick leave when their children are ill, only employee illness should qualify. The district could let employees use personal leave for family illness. Districts should check state law. Some states have given away the right to define when sick leave is usable, Lifton noted.

4. **Place limits on use of personal leave.** Two philosophies govern the use of personal leave in various districts nationwide. Under one philosophy, a teacher asks for time off under a personal leave clause, and the administrator grants or withholds permission. Under the other philosophy, the teacher tells the administrator that he or she is going to take personal leave, and approval is automatic. If the administrator finds out later that the employee violated the district standard regarding use of personal leave, the time off taken by the teacher will not be counted as personal leave.

Under either philosophy, a district should establish a cogent standard for use, such as: Personal leave may be used only to cover emergencies and business that cannot be conducted outside of school hours.

Without safeguards, personal leave can be flagrantly abused. One Michigan personnel director said teachers in his area used personal days to picket other school districts. Lifton noted that personal leave has resulted in more grievances than anything else in collective bargaining.

Cost-cutting tips: With many fringe benefits, the problem is not employee abuse, but the skyrocketing cost of benefits. Many ideas and case studies on ways to cut the cost of fringe benefits are discussed in detail in another AASA Critical Issues Report, *How Schools Can Save $$: Problems and Solutions* (available from the American Association of School Administrators, 1801 N. Moore St., Arlington, Va. 22209; $9.95 prepaid, which includes $1 for postage and handling).

Chapter XI

Reduction in Force

Job security promises to be one of the major labor relations issues of the decade. The National Center for Education Statistics predicts that enrollment decline will not begin to slow until 1982. The agency forecasts that enrollment will begin to rise again in 1984-88. Even then, districts are likely to have staffing problems because the increases will affect the lower grades, while surplus staff will be concentrated in the upper grades.

In the survey for this report, reduction in force (RIF), declining enrollment and job security ranked second among the major labor relations issues for the 1980s. More than one-third of the respondents (36 percent) mentioned one of these related topics. Only the issue of salaries rank higher as a bargaining concern of school administrators.

Concerns about job security issues also emerged in resolutions passed recently by educational organizations.

In 1980, delegates to the annual convention of the National Education Association (NEA) passed two resolutions related to job security. One urged NEA affiliates to negotiate in contracts or support legislation that included criteria to be used in a RIF. The criteria should be objective, include seniority, consider affirmative action and "exclude performance evaluation from consideration," the resolution said.

A second resolution on continuing employment and fair dismissal called for state laws and master contracts to guarantee teachers the right to a hearing and legal counsel and the right to present evidence "before demotion, dismissal or nonrenewal of contracts."

While teacher unions stress seniority as the prime consideration in making a RIF, administrators are concerned about teacher abilities. A 1979 AASA resolution said: "Program considerations and staff competence shall be the major priorities in retention of staff when reductions in personnel are required."

Negotiating RIF

It is clear that teachers will continue to bring job security demands to the bargaining table. The question is: Should districts agree to negotiate on RIF?

First, it is necessary to distinguish what districts must and may do. Districts should never negotiate the subject of whether they may RIF employees, Fred Lifton said. It's a non-negotiable item. Under the scope clauses of most state collective bargaining laws, however, the procedure to be used in RIFfing is a negotiable working condition. In other words, the board alone decides whether or not to RIF. Once it makes that decision, it may have to negotiate who gets RIFfed. "One of the worst mistakes a board could make would be to negotiate with the union whether it has the right to RIF," Lifton said.

Experts advise that all districts should compile enrollment projections so declines can be anticipated and accommodated in an orderly fashion.

If a RIF is near, the union is likely to press for a contract clause that requires a strict seniority basis for reductions and recall rights. A "reasonably palatable" alternative to a RIF clause based strictly on seniority, Lifton said, is a RIF clause based on departmental seniority. At least the teachers will have taught a particular subject or grade area, giving the district some assurance that the persons left after a RIF will have experience in desirable areas.

What a district does not want to do, Lifton cautioned, is to tie RIF to evaluation. Otherwise, he said, "you make every single termination grievable, and that's the last thing in the world you want to do. Going before an arbitrator or a judge and defending the RIFfing of a person on the basis of your evaluation puts you in the position of trying to meet an impossible standard.

"In my judgment," Lifton continued, "you either do not subject yourself to any RIF requirements or, if you are going to include a RIF clause, you should do so in such a manner that your subjective judgment is not going to be called into question in a grievance procedure."

Keep in mind: Collective bargaining involves compromise; therefore, a negotiated RIF procedure is more likely to limit management prerogatives than is a school board policy on RIF. If management raises the subject of RIF and fails to secure a clause acceptable to both sides, it will probably have waived its right to unilaterally implement such a policy during the life of the contract.

Note: It is a good idea to involve employees in formulating a RIF procedure. If employees see that a policy is fair and contains safeguards, they will be less likely to press for a RIF contract clause.

Check state law: Before negotiating a RIF clause, a district should consult the state tenure law, collective bargaining law and any laws governing reduction in force to determine any constraints that must be included in the RIF procedure. One example: In Illinois, which has no collective bargaining law, districts are required by law to RIF by seniority.

Many tenure laws say that nontenured teachers must be laid off before tenured teachers, when both are certified and qualified to teach a certain subject. In the absence of such a provision, courts have usually ruled that nontenured teachers must be laid off first, according to Robert E. Phay, writing in *Reduction in Force: Legal Issues and Recommended Policy*. Districts may not lay off tenured teachers first, Phay warns, unless state statute specifically permits it.

Must seniority be used in deciding among tenured teachers? No, says Phay. "The law is quite clear that unless the collective bargaining contract or statutes specifically require seniority, the board may decide what factors should be considered and what weight should be given to them in selecting the tenured teachers to be let go."

Caution: Districts must be more careful than ever in implementing a RIF because of two Supreme Court decisions in 1980 which greatly expanded the liability of public employers. In *Owen v. the City of Independence* (Mo.), a police chief sued, saying the city had fired him without giving reasons or a hearing, depriving him of his Constitutional right to due process. The Supreme Court ruled the city was liable for damages, even though officials had acted in good faith on the matter.

In *Maine v. Thiboutot*, the high court ruled that public entities in violation of a person's civil rights can be liable for the attorney fees of the plaintiffs.

The two decisions imply that a district in violation of a teacher's civil rights in a layoff or dismissal could be liable for punitive damages and the teacher's attorney fees.

Safeguards

In most states, districts have to meet only minimum statutory requirements (on timelines, for example) in order to RIF teachers. Districts cannot, of course, RIF anyone for illegal reasons (e.g., sex discrimination). A basic is to check state law before attempting a RIF.

To be on the safest possible grounds, districts should answer these four questions posed by school law expert M. Chester Nolte of the University of Denver:

1. Can the district bear the burden of proof that the RIF is unavoidable? Districts may base a RIF on one or more of the following reasons: financial emergency, loss of enrollment or a justifiable change in curriculum. Note: A change in curriculum must be related to either a financial or enrollment problem.

2. Can the district justify naming the teachers for RIFfing that it has named? The district's RIF procedure and criteria must satisfy these constraints: rights guaranteed by the U.S. Constitution, state law and any limits placed in the collective bargaining contract.

The U.S. Constitution guarantees freedom of speech and association, so districts may not select a teacher to RIF merely because of his or her union activities or criticism of the school board. The Constitution also prohibits discrimination based on sex or race.

3. Is the process the board uses to RIF teachers defensible? The Fourteenth Amendment to the Constitution says, in part, "No state shall . . . deprive any person of life, liberty or property without due process of law." The key elements of procedural due process are that no person shall be condemned unheard and that every judge or tribunal shall be free from bias.

In most states, procedural due process requirements are less stringent in a RIF than in a dismissal, because a teacher's reputation is at stake in a dismissal.

Phay lists these elements as important to include in a RIF due process procedure:

- Timely notice.
- Notice of reasons why the layoff is necessary, how the decision was made and the information used in reaching the decision.
- Right to a hearing. Tenured teachers and probationary teachers laid off in the middle of a contract have a right to challenge the layoff on two grounds: that the selection was arbitrary or capricious or that the selection was for a Constitutionally impermissible reason.
- Impartial hearing. School boards can conduct their own hearing or appoint an impartial person, such as a retired judge, to act as fact-finder who reports to the board.

4. What are the re-employment rights of RIFfed employees? Again, state laws often specify certain rights for laid-off teachers. Generally, the teachers must be placed on recall lists and be given priority for job openings for periods of one to three years.

Negotiating Tips

A general caution from Lifton bears repeating: Don't negotiate a RIF provision stipulating that the district will not lay off teachers. It's a non-negotiable item. Some other tips:

- Be careful to avoid clauses with vague phrases, such as "the district will make every effort to reduce costs before laying off teachers." Who will decide what "every effort" means?
- Don't base a RIF exclusively on seniority, unless state law leaves the district no choice. Be extremely cautious in negotiating a RIF clause that is based on merit and seniority because of implications for grievability.
- Districts that agree to negotiate on class size should be aware that rigid limits will affect their ability to RIF.
- To safeguard affirmative action, districts could maintain separate seniority lists of majority and minority staff members or negotiate a percentage "cap" on the number of minority faculty that could be laid off. (Note, however, that some court cases are still pending on affirmative action.)
- Use the terms "certified" and "qualified" with care. Check the state tenure law for definitions. Can a first-year teacher who is certified in Spanish, for example, bump a teacher with more seniority who has been teaching Spanish but is certified only in French?

Note: For more information on RIF, see: *Reduction in Force: Legal Issues and Recommended Policy* (National Organization on Legal Problems in Education, 5401 S.W. Seventh Ave., Topeka, Kan. 66606; $6.95) and *Staff Dismissal: Problems and Solutions* (an AASA Critical Issues Report), American Association of School Administrators, 1801 N. Moore St., Arlington, Va. 22209; $9.95 prepaid, which includes $1 handling).

Chapter XII

Non-unionized Districts

Unionization of employees can best be prevented, experts say, by taking the following actions:

- Develop advisory committees that give employees a voice in policies and working conditions.
- Pay employees fairly, with salaries and fringe benefits comparable to those being paid by area school districts of similar size.
- Communicate regularly with employees about their benefits. This can be done with paycheck stuffers that give cash values of all fringe benefits, annual reports and personnel booklets that describe health benefits, promotion opportunities and other aspects of employment.
- Provide an administrative complaint procedure whereby employees can get redress for wrongs or air gripes about working conditions or mistreatment. Union organizing drives often are mounted around causes such as the unfair discipline of an employee.
- Teach supervisors how to handle complaints, how to evaluate employees, how to discipline constructively and without vindictiveness.

Another idea is to conduct a periodic survey of teacher morale. Writing in the *American School Board Journal*, Lawrence C. Yehle, a labor relations consultant in New Mexico, advised that a survey should be conducted every two or three years when no union action appears imminent. The survey should attempt to find out what employees like and dislike about the district. The questions in the survey should cover wages, fringe benefits, grievance procedures, seniority layoff provisions, promotion and transfers.

The results should reveal what employees think about their jobs and management and ways to improve the system.

Results should be shared with employees, Yehle said. Then, problems dealing with procedural matters can be corrected easily. On the more complex items, he advised, "assure teachers that more study and remedial action are planned."

Yehle warns that conducting a survey and failing to follow through is far worse than no survey at all.

Forewarned is Forearmed

Districts that are not currently bargaining may still want to prepare for its advent sometime in the future. Three steps are recommended:

- Learn about collective bargaining.
- Review board policies.
- Develop or strengthen the management team.

Learning about collective bargaining: District administrators should become familiar with any state laws, court decisions or rulings by state agencies that inhibit or encourage labor organizing. By knowing ground rules, administrators will be better able to spot an organizing campaign in the making. In the absence of a state collective bargaining law, administrators should be alert to lobbying efforts at the state level. State school board and state administrator organizations typically monitor the legislature and keep members posted on any bills that would affect local districts. Similarly, district administrators should keep informed about labor organizing activities in neighboring districts.

The district's top management and those responsible for personnel or employee relations should become knowledgeable about the collective bargaining process, including preparations for bargaining, at-the-table negotiations and contract administration.

Board policies: Districts should review all board policies. Any that are out of compliance with state laws should be changed. Those that are unnecessary or out of date should be eliminated. Vague language should be clarified, and policies should reflect actual practice.

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Once bargaining begins, districts are unable to unilaterally change policies that affect terms and conditions of employment. In many states with collective bargaining laws, this prohibition takes effect as soon as union recognition is complete, not when the parties sit down at the table. Once an employee organization is duly recognized, the employer must bargain, and any board changes may be challenged as refusing to bargain in good faith. Since the first round of negotiations tends to be lengthy, any necessary changes could be delayed for a year.

Strengthening the management team: The management team concept, an effective way to run any school district, is especially important in districts that are involved in collective bargaining or anticipate its advent. Why? The strength of the contract is tested at the building level, in relations between employees and supervisors. In administering the contract, principals and other supervisors can undermine gains won at the bargaining table.

If superintendents expect building-level administrators to side firmly with management, they must give more than lip service to the concept of team management. Ways to strengthen the management team include:

- Establishing a separate structure of salaries and benefits for supervisors to ensure that their fortunes are not tied to benefits won by teachers at the table. **One idea:** Give supervisors an extra benefit or special package of benefits.
- Including principals in district decision making on a regular basis.
- Providing multiple opportunities for principals to guide management's negotiating position, both in the development of management demands and in responding to union demands.
- Providing regular channels of communications so that principals are the first to know of school board decisions and changes in administrative policy.

Counter the Organizing Campaign

In most states, a union must collect signatures from 30 percent of the affected group to request an election. In the past, districts generally remained neutral on such elections. Now, however, the National School Boards Association (NSBA) urges districts to campaign for a "no union" option on the ballot.

Management has the right and the responsibility to indicate to employees what their options are, August Steinhilber, NSBA associate executive director, said in an interview for this report. The union will highlight the advantages of membership; therefore, the district should mount a "countervailing information effort," he said. It should address the question: Why do you need the union?

Most practitioners advise that such a counter-campaign should be one of low profile.

One idea is to bring in an outsider who can talk constructively about the pros and cons of collective bargaining. Teachers also might be reminded that they would lose some benefits under a formal system.

Stages of Collective Bargaining

Lewis T. Kohler, chairperson of the Negotiations Research Committee of the Association of School Business Officials, divides collective bargaining into eight distinct stages:

1. Unorganized stage.
2. Organized stage. Employees consider one or more bargaining units.
3. Petition stage. Bargaining unit petitions school board for an election.
4. Election stage. Employees vote on whether a bargaining unit will represent them.
5. Certification and recognition stage. School board and state recognize the bargaining unit.
6. Preparation for negotiations. District managers and labor leaders get ready for the bargaining table.
7. Negotiations stage. Agreement is reached on differences. Gains made by district and employee organizations are put in writing and voted upon by both parties.
8. Contract administration stage. Day-to-day process of interpreting the contract by principals, first-level supervisors and the administrator in charge of employee relations. The process lasts throughout the life of the contract.

Collective bargaining does not have to produce results detrimental to education, Kohler said. He contends that school negotiations could be conducted in an atmosphere that benefits both management and labor.

If negotiations are to be constructive, Kohler said, management and labor must force a spirit of cooperation.

Union Organizing Campaign: Do's and Don'ts

DO prohibit union solicitation on school time. Management may prohibit petition drives calling

for a union election and union membership drives. **Note:** Management may not prohibit the distribution of union literature if it allows other groups to distribute literature on school property.

DO train principals and other supervisors on their responsibilities and limitations during an organizing campaign. **They must not:**

- — Discriminate against employees or criticize them for union involvement.
- — Ask employees how they will vote in a union election.
- — Try to influence employee votes.
- — Question employees about their union activities, membership or beliefs.
- — Supply addresses of employees to unions or to those opposed to unions.

DO conduct an election by secret ballot. Don't believe the union's claims that it has the support of a majority of employees.

DO establish procedures for an election, including polling places, hours of voting, numbers of observers and posting of results. The election should be conducted by a neutral group (e.g., a state employee relations board, the American Arbitration Association or local citizens).

DO determine the definition of the bargaining unit before the election. Inclusion of supervisors, especially principals, could affect the superintendent's ability to manage the district. Also, the inclusion or exclusion of certain employees may determine which of two unions will win or whether a union will win approval by employees. **Note:** Some state laws mandate which employees may be included or excluded. In states without a bargaining law, districts may be able to specify which employees should be excluded (e.g., all supervisors and confidential employees) in exchange for granting the election.

Labor laws generally state that employees in a union should have a "community of interest." Applying that standard, a district might have separate unions for maintenance, food workers and secretaries. Practitioners warn against fragmentation, because multiple unions can whip-saw a school district in attempts to keep up with each other's benefits. In a small district, multiple unions are probably impractical, and negotiating separate contracts would be time-consuming.

DO inform employees of their rights. Unless collective bargaining is prohibited, employees have the right to form or join unions or to *refrain* from joining unions.

DO counter union propaganda with management's perspective on the issue. This should be a low-profile effort. **Caution:** Although some practitioners favor the printing of posters and brochures and even taking management's case to the public, such actions might be considered unfair labor practices in certain states.

Note: Conducting a vigorous campaign could start labor relations off on a sour note if the union wins. If management appears overbearing, the counter-offensive could have the undesirable effect of rallying support for the union.

DON'T promote one competing union over another. In the past, some employers encouraged employees to vote for a particular union in the hopes that management could dominate it. Such efforts usually backfire.

Note: These do's and don'ts were based on interviews for this report and information in two publications: *Education Management and the Union Organizing Campaign* (published by the Association of School Business Officials) and *Management Rights: Little Understood, Little Used, Quickly Lost,* 2nd edition, (published by the Labor Management Relations Service).

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Chapter XIII

Administrator Bargaining

Bargaining by principals and other district middle managers has grown significantly in recent years. Districts in 24 states bargained with principals in 1979, according to Dartmouth professor Bruce Cooper. Writing in *Phi Delta Kappan*, Cooper said the number of districts was 67 percent higher than he found in a similar survey in 1975.

Nineteen percent of the respondents to the **Critical Issues Survey** reported bargaining with their principals, but opinion was sharply divided over whether the trend was a healthy one.

Administrators from districts currently bargaining with principals were more likely to favor the concept: 56 percent favored bargaining rights for principals, compared with 35 percent in opposition. Nine percent were undecided.

When all 711 survey replies were tabulated, including districts that do not bargain with principals, opponents of bargaining outnumbered proponents by nearly four to one: 58 percent opposed principal bargaining, 15 percent favored it, and 16 percent were undecided.

Respondents were equally opposed to granting bargaining rights to other administrators: 58 percent opposed, 19 percent in favor and 17 percent undecided.

The growth of administrator bargaining bears a definite relationship to teacher bargaining, William Pharis, executive secretary of the National Association of Elementary School Principals, said in an interview for this report. Where teacher bargaining is strong, administrator bargaining is more abundant.

Growth is also regional: "The trend is growing in New England, the Mideast and the Great Lakes, while in the Southeast and Southwest, nothing is happening," Pharis said.

Does the presence of administrator bargaining change the way a district bargains with its teachers?

To answer that question, 80 **Critical Issues Surveys** were analyzed. Half were from districts that bargain with principals; the other half were from the same states and comparably sized districts that do not bargain with principals.

About two-thirds of both kinds of districts consulted with principals when preparing management's bargaining package. Those that do not bargain with principals were slightly more likely to provided training for principals in negotiations or contract administration: 50 percent provided training to non-unionized principals, while 43 percent of the unionized principals received training.

The main difference: Districts that bargain with principals were much less likely to use principals on the management bargaining team in negotiations with teachers. Only 28 percent of districts with unionized principals had principals at the table, while 45 percent of the districts whose principals did not bargain served on the management negotiating team.

Pro and Con

Three survey respondents were interviewed about principal bargaining. Two superintendents voiced a similar sentiment: Principals have as much right as teachers to have clearly defined working conditions and job security.

"It's not that I favor unionism," explained Phil Bonner, superintendent of the 3,100-pupil Peru (N.Y.) Central School District. "It's just that — with the climate we have in schools today — it makes just as much sense for them to have an organization as for custodians, secretaries and teachers."

Unionized principals become "barriers to the management team," according to a personnel director of a medium-size New York district who opposes

bargaining rights for principals. "You can't sit in the high halls and talk about policy and at the same time be a trade union. The goals and missions are different."

AASA opposes bargaining rights for principals because it believes the concept is incompatible with the management team. Principals should be part of management, according to AASA, and no person can be both labor and management in the same organization.

Opponents cite additional problems with principal bargaining: (1) Principals may "look the other way" when teachers are engaging in a job action because one union does not want to antagonize another. (2) Upper level management depends on principals to administer the teacher contract and to run the schools.

Why do principals organize? Here are some of the most frequently cited reasons:

- Principals often get the smallest salary and benefit packages because little is left after the district finishes negotiating with teachers.
- Some superintendents pay only lip service to the management team concept.
- Principals are demanding more job security as declining enrollment results in their being laid off or returned to lower paying teaching jobs.
- Teacher contracts sometimes restrict principals on management prerogatives such as teacher transfer, evaluation and hiring and firing.

Preventive Medicine

Can administrative bargaining be avoided?

Yes — by strengthening the management team, say many practitioners. They offer these additional tips:

- Make sure that managers at all levels are communicating on a regular basis.
- Make sure administrators make more money in a 12-month period (on a monthly basis) than teachers make for a 9- or 10-month work year.
- Consider special fringe benefits for administrators, such as an annuity program.
- Clarify principals' roles and working relationships.
- Seek suggestions from principals on teacher negotiations so contract provisions do not erode the principal's authority as a manager.

At the Table

Negotiations with administrators require use of many of the same principles as negotiations with teachers. The team should be well prepared, figure cost implications for all proposals and expect a quid pro quo for concessions.

S.B. Hinman Jr., director of personnel relations for the New York State School Boards Association, offered these additional tips at a clinic sponsored by the National School Boards Association:

- Have a record of backing up principals when they are right.
- Don't expect administrators to settle for less because they know the district's problems.
- Don't sign "sweetheart contracts" to keep organized administrators from affiliating with a union.
- Evaluate administrator demands with these three questions: (1) Can the superintendent still administer the schools? (2) Are statutory duties of the superintendent or school board being invaded or usurped? (3) Is the proposed clause consistent with established school policy and contracts with other employee groups?

Getting Along

The keys to a successful relationship with unionized administrators are flexibility and a willingness to work together to find areas of agreement, said Supt. Phil Bonner.

Bonner gives principals "considerable freedom" in running their schools, and he stands behind their decisions — even when he disagrees with them. "I'm not going to second-guess them," he said.

Bonner echoed a theme often heard in the context of teacher bargaining: School boards often precipitate administrator bargaining by failing to treat middle management fairly.

The Future

Most observers and practitioners predict an expansion in administrator bargaining.

John Pisapia, associate professor at West Virginia University, disagrees. He believes states may begin revoking administrator rights to unionize. He pointed out at the 1980 AASA convention that supervisors in both private industry and the federal government were initially given bargaining rights that

were later withdrawn. Florida and Rhode Island have rescinded administrator bargaining rights, and other states may follow their lead, he said. Pisapia estimated, however, that administrators nationwide would not be deprived of the right to organize until the year 2000.

The conclusion: School boards should not sit idly by and assume "it can't happen here."

Resources

American Arbitration Association, 140 W. 51st St., New York, N.Y. 10020
AAA representatives can supervise representative elections and provide mediators, fact-finders and arbitrators. AAA's National Council for Dispute Settlement can mediate disputes outside the traditional labor-management arena, such as confrontations between students and administrators. Publications include "Labor Arbitration in the Schools," a monthly summary of AAA arbitration awards.

Conference of School Board Negotiators, National School Boards Association, 1055 Thomas Jefferson St., N.W., Washington, D.C. 20007
Membership is open to those who negotiate for school boards and board members who serve on negotiating teams. Services will include an annual convention, quarterly magazine, training sessions, a crisis center for dispute resolution and a clearinghouse of arbitration decisions and contract clauses.

Educational Research Service, Inc., 1800 N. Kent St., Arlington, Va. 22209
This agency provides research information on educational issues. Services to school district subscribers include: a monthly newsletter summarizing research, 15 research reports, studies on salary and fringe benefits, a "school budget profile," and an "on-call information service."

Federal Mediation and Conciliation Service, 2100 K St., N.W., Washington, D.C. 20427
The FMCS is an independent agency created by Congress whose services are free to public employers and employees. Trained representatives can mediate bargaining disputes and arbitrate grievances. Jurisdictions are asked to consult state or local mediation services, if available. If not, parties may contact the FMCS at one of its eight regional or 71 field offices. The FMCS is found in the telephone book under "U.S. Government."

Labor Management Services Administration, Division of Public Employer Labor Relations, U.S. Dept. of Labor, Washington, D.C. 20210
This agency provides training films and other materials on negotiations, mediation, fact-finding and grievance arbitration.

National Association of Educational Negotiators, 607 W. Main St., New Port Richey, Fla. 33552
Membership in this organization is open to professional negotiators, administrators and school board members who serve on the negotiating team. A newsletter is published 10 times a year and the group sponsors a national conference.

National School Labor Relations Service, 1620 Eye St., N.W., Washington, D.C. 20006
This service is jointly sponsored by AASA, the National School Boards Association and the Labor-Management Relations Service of the U.S. Conference of Mayors. It provides: a monthly newsletter focused on the needs of board members and administrators; an "inquiry service," which provides access to NSLRS labor relations experts; special reports dealing with significant school labor developments; training programs; a computerized grievance arbitration information service; and contract and labor relations program audit service.

Other AASA Critical Issues Reports

Keeping Students in School: Problems and Solutions. Student truancy — always a problem — is getting worse, according to administrators who run the nation's schools. This report provides an in-depth look at truancy, as well as other aspects of student attendance. It also suggests solutions to the attendance problems considered critical by the more than 1,400 school administrators who answered a Critical Issues Survey. It examines why students stay away from school; the issue of dropouts (who, how many, why); what demographic trends reveal about attendance patterns in the future; and how schools are coping with attendance problems through tougher policies and programs. (79pp; 1979; single copy, $8.95; Stock No. 021-00331)

Student Discipline: Problems and Solutions. A large number and variety of measures now exist for preventing and coping with unacceptable student behavior. This report defines: how school boards set the course for discipline; how the student handbook can be an indispensable instrument for the management of student conduct; how to tap student resources; 15 ways to get parents involved; what teachers can do; and the latest tips and advice on curriculum improvement, reducing vandalism and violence, smoking, in-school suspension, corporal punishment, and suspension and expulsion. One of 10 "must reading" books selected by the National School Boards Association in its 1980 annual roundup of education books. (80pp; 1980; single copy, $9.95; Stock No. 021-00334)

How Schools Can Save $$: Problems and Solutions. The problem confronting schools today and during the years ahead is stark — expenses are going up at a rapid rate and income is not going up fast enough to meet the added cost. Consequently, balancing the school budget in the 1980s is going to be one of the toughest jobs confronting school administrators and school boards. This report includes "how to" advice, suggestions from experts and case studies on cutting the costs of the most expensive items in any district's budget. Included, for example, are: 15 budget cutting concepts; how to reduce staffing costs; facts and tips on negotiating salary increases and fringe benefits; how to reduce energy and insurance costs. (80pp; 1980; single copy, $8.95; Stock No. 021-00333)

Teacher Competency: Problems and Solutions. The testing of new and on-the-job teachers is already under way in several states and school districts. This report tells what researchers are finding out about what makes a "good" teacher and what administrators can do to improve teachers and to help principals better perform their jobs as instructional leaders. In-depth information is included on the "new look" in inservice education and on teacher centers. Special features give tips on how to reward teachers for good teaching and how several school districts eliminate time-wasters that cut into instructional time and reduce teacher effectiveness. One of the 10 "must reading" books selected by the National School Boards Association in its 1980 annual roundup of education books. (80pp; 1980; single copy, $8.95; Stock No. 021-00332)

Staff Dismissal: Problems and Solutions. Who says teachers and other school employees can't be fired? They can. School districts can dismiss teachers and other staff members in cases of incompetency or when declining enrollment or budget problems demand cuts. This report examines the following questions raised by more than 1,700 AASA members in a Critical Issues Survey: What can be done about incompetence? What are the steps in building a dismissal case? What can be learned from districts that have successfully dismissed staff? What about teacher tenure, alternatives to RIFfing, and due process requirements? One of 10 "must reading" books selected by the National School Boards Association from among 2,500 new education titles in 1978. (80pp; 1978; single copy, $8.95; Stock No. 021-00512)

The Competency Movement: Problems and Solutions. This report provides a comprehensive analysis of the reasons underlying the minimum competency movement. It answers the questions of more than 1,500 AASA members who responded to a Critical Issues Survey. It includes: reasons behind the competency movement; considerations in adopting a policy on minimum competency; what kinds of tests can be used; the pros and cons of issuing a single diploma or certificate and available alternatives; case studies of how various districts and states are implementing competency requirements. A national clearinghouse on minimum competency testing called this report "perhaps the best single source of information on competency testing." (92pp; 1978; single copy $8.95; Stock No. 021-00510)

School Energy Crisis: Problems and Solutions. Schools don't have to sit immobilized while they're clobbered by higher and higher energy costs. This report provides answers to the concerns expressed by more than 3,400 AASA members who replied to a Critical Issues Survey. Topics covered include the following: the energy crisis — impact on the nation's schools; energy audits, the basis for savings; how to hire energy consultants; advice on energy saving construction; reducing transportation costs; model programs, ideas, contacts. One of 11 "must reading" books selected by the National School Boards Association in its 1977 annual roundup of education books. (88pp; 1977; single copy, $8.95; Stock No. 021-00380)

Discount and Ordering Information

Order from the American Association of School Administrators, 1801 N. Moore St., Arlington, Va. 22209. To order a single copy of any report, please add $1 for postage and handling. Orders for less than $15 must be accompanied by payment in full. Discount on any Critical Issues Report: two to nine copies, 10% discount. Write for prices of 10 or more copies. Please indicate stock numbers on orders.

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